A HANDBOOK
OF
PUBLIC INTERNATIONAL LAW

T. J. LAWRENCE

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BY

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PREFACE TO THE FOURTH EDITION

THE adoption of this little book by the Admiralty for the use of officers of the Royal Navy rendered necessary a second edition within a few weeks of the publication of the first. A third followed in due course, and now a fourth makes its appearance. The text has been carefully revised throughout, so as to make it, as far as the small space at my disposal will permit, a source of information upon important matters which have arisen in recent years. I have dealt at some length with the law of Occupation, and with the questions arising out of the existence of Protectorates, Spheres of Influence, and Chartered Companies. The arrangement of the subject-matter has been altered here and there, I hope for the better. A chapter on "The Acquisition of Enemy Character" has been added to Part III. A considerable amount of additional information has been inserted in several of the chapters dealing with War and Neutrality, in the hope that naval and military officers, who have

already expressed in generous terms their approval of the book, will find in it a more useful epitome than before of the rules and principles they have to apply in the rough emergencies of practice. The index, now added for the first time, will render easier the task of consulting the book with rapidity. This edition contains a few pages more than its predecessors; but the bulk of the volume has not been materially increased. Room has been found for some of the additions by leaving out a few passages which dealt rather with questions of policy than with rules which have met with more or less general acceptance.

T. J. LAWRENCE.

DOWNING COLLEGE, *December* 21, 1897.

PREFACE TO THE FIRST EDITION

THIS little book owes its origin to the exigencies of tuition. As a teacher of International Law at Cambridge, I found that my pupils were almost unanimous in testifying to the benefits they derived from the syllabus of my lectures, which it was my custom to print and distribute among them at the commencement of every course. The kindness with which these outlines were received has encouraged me to revise them carefully, and publish them as a connected whole, with many alterations and additions. I trust that in their present form they will be useful to students, especially those who are compelled to read the subject at a distance from the great centres of legal education, and without the assistance of oral instruction; and I am not without hope that teachers will find them helpful in the preparation of their lectures and discourses. I do not for one moment wish to suggest that the book can be used as a substitute for the comprehensive treatises on International Law with which the last half-century

has enriched our legal literature. It is rather intended as a guide to them. Their chief defect is to be found in their arrangement. And in order to help the student to overcome any difficulties he may have experienced on this score, I have endeavoured to deal with the subject in a systematic manner, giving clear and definite divisions based on intelligible principles, and showing throughout a correlation of parts, which may help to a proper understanding of the whole. The book is in no sense an analysis of any larger work; but it claims to be an analysis of Public International Law. Little that is new will be found in it. Indeed no worse condemnation could be written of a treatise on existing international relations than that it was full of rules which had never seen the light before. But I trust that some modifications of generally received doctrines, and some restatements of historical and legal propositions, will find favour with those competent to judge, as being fair inferences from the events of the present century, and fair applications of the results of recent research. International Law is fortunately a living thing; and it behoves even the humblest of its expositors to watch its growth, and set forth its changes and developments. But, on the other hand, there is danger lest new rules should be laid down, or old ones modified, before there is sufficient evidence

of a permanent alteration in the practice of States. I trust I have nowhere laid myself open to the charge of mistaking the puff of a passing breeze for the steady current of international opinion. When old rules no longer receive the deference they once commanded, and no new rules have as yet met with general acceptance, I have not hesitated to say that the law is doubtful, though I have generally indicated the direction which it seems to me that change is taking. The uncertainty of International Law is often greatly exaggerated; but nothing is gained by attempting to represent it as more fixed and settled than in some of its chapters it really is.

With a view to the convenience of students I have added at the end of every chapter a few questions on the subject-matter, and a few directions as to reading. In the latter I have referred only to English books, and among them chiefly to such well-known text-books as can be easily purchased, or consulted in any good law-library. It is not, of course, supposed that an ordinary reader will look up all the references given. He will probably possess either Mr. Hall's excellent *International Law*, or the scarcely less useful edition of Wheaton's *Elements of International Law*, edited by Mr. A. C. Boyd. These are referred to throughout at the commencement of all the "Hints as to Reading"; and when he desires

further information on any point, he will discover where to get it by running his eye over the remainder of the directions given. He will not, however, find references to works intended rather for practitioners than for students. Moreover the discussions as to the definition and nature of International Law, which must of necessity come first in logical order, may well be deferred to last in the order of time. It is almost impossible to follow and appreciate an argument on these points before a competent knowledge has been gained of the system whose boundaries and character it is sought to fix.

T. J. LAWRENCE.

DOWNING COLLEGE, *May* 25, 1885.

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PART I

INTRODUCTORY

CHAPTER I

THE DEFINITION AND NATURE OF INTERNATIONAL LAW

A. The Definition of International Law.

INTERNATIONAL LAW may be defined as *The rules which determine the conduct of the general body of civilised States in their dealings with each other.* There is still much dispute as to the nature of International Law, its methods, its limits, and its relation to the science of Ethics. All attempts to define it are coloured by the views held with regard to these matters by the individual who frames the definition. That which we have just given proceeds upon the theory that it is the chief business of students of International Law to find out the rules actually observed by States in their mutual intercourse, and to classify and arrange them by referring them to the fundamental principles on which they are based. We must note with regard to it that it refers to

(1) Rules which *are* generally observed, not to

rules which in the opinion of those who propound them *ought to be* generally observed.

Whether a rule is morally right or morally wrong, it forms part of International Law if it is generally accepted and acted upon.

(2) Rules which are generally observed by *civilised* States, not rules which are generally observed by *Christian* States only.

Modern International Law grew up among a group of Christian States, and was largely influenced by Christian views of conduct; but inasmuch as it is now accepted by a few non-Christian States, such as Turkey and Japan, we cannot speak of it as a system peculiar to Christian nations. It is, however, peculiar to civilised peoples; but the exact amount of civilisation necessary cannot be reduced to definition. Though utterly barbarous tribes could not come under it, the conduct of civilised States towards them should be regulated by the principles of justice and mercy.

(3) Rules which are generally observed by civilised States in some of their dealings with *individuals belonging to other States*, as well as rules which are generally observed by civilised States in their dealings with *other States*.

Each State in its dealings with foreigners is governed partly by rules which it is free to settle for itself at its own discretion, and partly by rules which are determined by the

general agreement of civilised powers. The former do not belong to International Law, the latter are part of it. In many cases of maritime capture, for instance, States deal directly with private individuals belonging to foreign nations according to rules which have received the express or tacit consent of all civilised powers.

The name International Law is comparatively modern. Till the present century the science was called the Law of Nations, or the Law of Nature and Nations. But the new designation is better, because it avoids the danger of confusing our subject with the Roman *Jus Gentium*, and points unmistakably to its character as a system of rules binding *between* States in their mutual intercourse.

B. **The Nature of International Law.**

In discussing the nature of International Law we have to consider

(1) Whether we can deduce it from Natural Law, that is to say, from certain principles of universal authority, discoverable by human reason, but existing independently of any arrangements made by men, or whether it is generalised from the practices of States in their mutual dealings.

The founders of modern International Law were disciples of the first theory, owing to

their belief in a Law of Nature applicable to States; but they did not distinguish it clearly from the second, and their mixed methods of thought have often been followed by succeeding writers. It can, however, be shown that

(*a*) The theory of a Law of Nature is false historically, and untenable philosophically, because it confounds together the actual and the ideal.

(*b*) Those who believe in it differ greatly as to the character and commands of the so-called Law of Nature.

(*c*) States generally appeal in their controversies, not to innate principles and absolute rights, but to rules which can be proved to have been acted upon previously in similar circumstances by all or most civilised nations.

We therefore hold that the rules of International Law are to be discovered by observing the conduct of States in their mutual dealings, and that its method is mainly historical and inductive. But ethical considerations are not to be altogether banished, because sometimes there are two or more currents of practice, and when practice is diverse law is doubtful. In such cases the opinions of jurists should be given in favour of those rules which seem most just and humane, and best accord with accepted doctrines. Moreover, new cases often arise unlike

any that have been decided before. New rules are then wanted, and in their creation moral principles should be allowed a preponderating influence. International Law advances by means of the growth of opinion; and to its students belongs the responsibility of influencing the minds of men in favour of righteousness in all transactions between States, though they must never be led by moral enthusiasm into declaring a good rule to be part and parcel of their system before it has met with general acceptance.

(2) Whether International Law is, properly speaking, law at all.

Most of its rules lack a definite sanction and therefore their claim to be considered laws is generally denied by English thinkers, who accept Austin's account of Law, and place the regulations of the international code among "the positive moral rules which are laws improperly so called." It should, however, be noted that

(*a*) The rules of maritime capture have very definite sanctions, and are therefore laws according to the strictest Austinian canons.

(*b*) The Austinian definition of Law is not the only one possible. If we follow it in the stress it lays upon superior force, regarding laws as commands which man is compelled to obey by fear of a definite

evil to follow upon disobedience, we must hold that most of the rules of International Law are not laws in the strict sense of the word. If, on the other hand, we lay stress rather upon the notion of order, regarding laws as commands which do actually regulate conduct, then we may use the term International Law with perfect propriety.

We may sum up our conclusions with regard to the nature of International Law by saying that it must be looked upon as, in the main, a collection of positive rules actually observed among civilised States, but that whether we call it Law or not is a matter of nomenclature of no very great importance, as long as we have just ideas of its character, its methods, and its immense value as an instrument of human progress.

Questions

1. Define International Law, and discuss the propriety of the name.
2. To what kind of States is International Law applicable?
3. What is the proper method to be followed in the study of International Law?
4. Examine the theory of a Law of Nature.

Hints as to Reading

Most of the questions discussed in this chapter are

dealt with by Hall in the Introductory Chapter of his *International Law.* Boyd's edition of Wheaton's *International Law,* Part I., Chapter I., should be read by those who wish to trace the various versions of the theory of a Law of Nature given by the great writers whose opinions are set forth therein. Most books on International Law commence with some account of its nature, and some attempt to define it. Such an account and attempt are to be found in the first two Chapters of Part I. of Lawrence's *Principles of International Law.* The best statement of the Law of Nature and its relation to International Law is given in Chapters III. and IV. of Maine's *Ancient Law.* Lectures I. and V. of Austin's *Jurisprudence* set forth the commonly received views as to the nature of Law in general and International Law in particular. Comments upon them will be found in the works of Maine, Holland, Clark, Markby, and other writers on Jurisprudence. Westlake deals with the subject in the first Chapter of his *International Law.* Sir J. F. Stephen discusses International Law in his *History of the Criminal Law,* Chapter XVI. His views are examined in the first of Lawrence's *Essays on some Disputed Questions in Modern International Law.*

CHAPTER II

THE HISTORY OF INTERNATIONAL LAW

A. Periods.

THERE are few tribes so barbarous as not to have some customary rules for their guidance in dealing with their neighbours; but International Law, as we understand it, is a system which has grown up among the nations of Europe, and has extended itself to all civilised communities outside the European boundaries. In its modern form it is scarcely three hundred years old; but rudimentary germs of it are to be found in remote antiquity. We may divide the history of International Law into three periods, each of which witnessed the application of a definite principle to the mutual relations of States.

(1) From the earliest times to the establishment of the Roman Empire.
(2) From the establishment of the Roman Empire to the Reformation.
(3) From the Reformation to the present time.

Each of these periods gradually merges into its

successor, and each is marked by the supremacy of a fundamental principle, which is for ages accepted without doubt or hesitation, is then questioned as it becomes less applicable to altered circumstances, and is finally superseded by a new principle adapted to the changed state of international affairs.

B. Principles.

We will now state the principles referred to above, and show how each forms the basis of International Law in the period to which it applies.

(1) The principle of the first period was *That States as such had no mutual rights and obligations, but that tribes which were connected by blood-relationship owed each other certain duties.*

Kinship was the basis of all ancient society; and as it settled the condition of the individual within the State, so it prescribed and limited the duties of the State to other States. Outside the circle of real or supposed blood-relationship there was nothing between men. Thus we find in the history of ancient Greece that

(*a*) Barbarians were regarded as intended by Nature to be slaves, and no relations but those of hostility were accounted possible with them.

(*b*) Among peoples of Hellenic descent there was a rudimentary International

Law, which laid down that those who died in battle were to be buried, that those who resorted to the public games were not to be molested, and a few other rules of a similar kind.

(*c*) A code of maritime law grew up among the seafaring Greek peoples, and was afterwards embodied to some considerable extent in the legislation of the Roman Emperors.

With regard to Rome no satisfactory evidence has been produced that the Republic regarded foreign nations as possessed of any rights against it, other than those arising from special compact, except perhaps as regards the keeping of faith and the sanctity of the persons of ambassadors. The enforcement of discipline in its armies, and the ceremonial for declaring war prescribed by the *Jus Feciale*, sprang from the Roman love of order, rather than from any idea of international duty.

(2) The principle of the second period was *That there was somewhere a common superior whose decisions were binding upon States.*

When the Roman Emperors ruled the greater portion of the then civilised world, the notion of universal sovereignty arose and became one of the most deeply-rooted ideas of mankind. We have to note with regard to it that

(*a*) Till the Roman Empire sank into decay, idea and fact corresponded. The disputes of subordinate princes and commonwealths were settled by appeals to Cæsar. What he commanded was law in international as well as in municipal affairs.

(*b*) The revived or Holy Roman Empire of Charlemagne and his successors claimed universal supremacy, and men held the claim to be reasonable. As the Papacy grew stronger, and the Empire became more and more Germanic, the Popes set up a rival claim to world-wide dominion. But the rise of the notion of territorial sovereignty, the gradual curtailment of the Empire, and the corruptions of the Papacy, tended to weaken the theory that States must of necessity have a common superior.

Belief in the principle of universal supremacy was shattered by the Reformation. The Pope and the Emperor were compelled to take sides in a great international conflict, which, according to the hitherto dominant theory, ought to have been settled by the authority of one, or the other, or both of them. At the same time the discovery of America raised a host of new problems which existing rules were unable to solve. There was great danger of international anarchy, but fortunately a

new system arose in time on the ruins of the old.

(3) The principle of the third period is *That States as such have mutual rights and obligations, which do not rest for their authority upon the commands of any common superior.*

The destruction of the old international order, and the need of some solution of the questions which arose from the discovery of the New World, set many able men on the endeavour to find some generally acceptable foundation for a new order. By far the most successful of these was Hugo Grotius, who published his *De Jure Belli ac Pacis* in 1625. He may be regarded as the founder of modern International Law. His reasoning was based upon the proposition that though States have no common superior, nevertheless they are bound to one another by mutual duties, which are determined by a Law of Nature and by general consent. In elaborating his system he borrowed largely from the Roman *Jus Gentium*, a system connected, like his own, with Nature and Nature's Law. Statesmen and jurists adopted his principles; and they became the foundation of the public law of modern Europe. We must note that

(*a*) The theory of a Law of Nature is now falling into discredit, and the express or tacit consent of States to be bound by the rules of International Law is gener-

ally regarded as the sole and sufficient foundation for their authority.

(*b*) The age of Grotius believed implicitly in Natural Law, and would probably have declined to accept his humanising precepts, had they not been regarded as portions of a code which was held to possess a binding force independent of human institution.

Since the time of Grotius International Law has advanced along the lines laid down by him. Some of his rules were never adopted; others were once acted upon, but have been dropped in the course of progress; many were in a rudimentary condition, and have since developed with the growth of civilisation; while large bodies of new rules have been elaborated to meet new wants and deal with changed circumstances. But in its broad outlines the Grotian system still remains; and though, as we shall see when we come to Part II., Chapter IV., one of its fundamental principles shows signs of giving way, in other respects it seems likely to command the assent of civilised mankind for a long time to come.

QUESTIONS

1. Into what periods would you divide the History of International Law? Give the reasons which cause you to make the divisions you adopt.

2. Show that the principle of kinship was the

foundation of international relations in ancient society.

3. Account for the break up of the European State System and international order at the time of the Reformation.

4. What were the fundamental propositions of the *De Jure Belli ac Pacis* of Grotius? Show how they became the foundation principles of modern International Law.

Hints as to Reading

Hall's Introductory Chapter and Wheaton's first Chapter contain some account of the theory of Grotius, and in Chapter IV. of Maine's *Ancient Law* its connection with Roman Law and the so-called Law of Nature is well brought out, though more recent research seems to call for the modification of some of the views therein expressed, as is recognised by Maine himself in Lecture II. of his *International Law.* These questions are discussed at length in Chapter IV. of Walker's *Science of International Law.* Chapter V. of Maine's *Ancient Law,* and Lecture III. of the same author's *Early History of Institutions,* show how kinship was the basis of early society. In Grote's *History of Greece,* Part II., Chapter II., will be found a description of some of the rudimentary international usages of the Greek communities. Chapters VII. and XV. of Bryce's *Holy Roman Empire* show the character of the power exercised by the Pope and the Emperor on the international affairs of mediæval Europe. Lawrence deals with the history of Inter-

national Law in Part I., Chapter III., of his *Principles of International Law;* and similar outlines will be found in Book I., Chapter II., of the edition of Manning's *Law of Nations* edited by Sheldon Amos, in Chapter I. of Sir S. Baker's edition of Halleck's *International Law,* and in Chapters II.-V. of Westlake's *International Law.* Wheaton's *History of the Law of Nations* is valuable as a book of reference.

CHAPTER III

THE SUBJECTS OF INTERNATIONAL LAW

A. Subjects.

THE subjects of International Law do not all stand on the same footing with regard to it. Its rules govern their mutual relations in a greater or less degree, according to the circumstances set forth in the rest of this chapter. They may be classified as follows:

(1) Sovereign States.

A state may be defined as *A political community, the members of which are bound together by the tie of common subjection to some central authority, whose commands the bulk of them habitually obey.* It is *sovereign* or *independent*, if its government does not render habitual obedience to any earthly superior. It is *a subject of International Law* if it is one of the States among whom the accepted system of international rules grew up, or if it has been received into the family of nations, that is to say, into the number of those political communities which possess the rights and are

subject to the obligations conferred by International Law on Sovereign States. Internal sovereignty is the power exercised by rulers over their own subjects. External sovereignty is the power of dealing on behalf of a State with the government of other States. The Sovereign States that are subjects of International Law must be divided by two classes:

(*a*) The Great Powers of Europe and the United States of America. They are rapidly gaining in many important matters a position of primacy, which we shall consider in Part II., Chapters I. and IV.

(*b*) Ordinary Independent States. They possess all the ordinary rights given by International Law to Sovereign States, but do not share the authority claimed by the Great Powers in supervising and altering some of the existing international arrangements.

All independent political communities in which the supreme authority speaks for the whole State in its dealings with other States, are alike in the eye of International Law, whatever may be the peculiarities of their internal constitutions. The question whether a State is internally an organic whole or a Federation is important from the point of view of Constitutional Law, but does not come within the province of International Law, unless a portion of the powers of external

sovereignty is reserved by the Federal Pact to each separate State within the Federation. If Sovereign States belong to the family of civilised nations, they are subject to the law in the fullest degree, their external relations being entirely governed by it.

(2) Part-sovereign States.

A Part-sovereign State, in the sense given to the term in International Law, is *A political community in which part of the powers of external sovereignty are exercised by the home government, and part are vested in some other political body, or left in abeyance altogether.* Such communities come under International Law only with regard to that portion of their external affairs in which they can act for themselves. They may be divided into three classes.

(*a*) Communities under a Suzerain. The Suzerain is the State possessing the powers of external sovereignty which the home government of the community in question may not exercise. Thus Turkey possesses suzerain rights over Egypt, because the latter is forbidden by the Firman of 1879 to conclude any treaties containing political arrangements with foreign powers, and is bound to communicate all commercial and postal conventions to the Porte before they are published.

(*b*) Members of a Confederation in which

each State retains some of the power of external sovereignty, while the remainder are exercised by the central authority of the Confederacy. The German Confederation as it was from 1815 to 1866 is a good example.

(*c*) Communities which are deprived of some of the powers of sovereignty by Public Law. Of this kind are permanently neutralised States, like Belgium. Their neutrality is guaranteed on condition that they never make war except to defend themselves from actual attack. Their governments are thus considerably restricted in the conduct of their external affairs.

The term Part-sovereign is not applied in diplomatic documents to such confederated or neutralised States as we have just been considering; but for purposes of classification it is necessary to bring them under a generic name which shall distinguish them from States whose national governments can exercise all the powers of external sovereignty.

(3) Belligerent Communities not being States.

These are communities which are endeavouring to assert their Independence by war, but are not yet recognised as Sovereign States. They often obtain what is called Recognition of Belligerency, the effect of which is to endow them with the rights, and impose upon them

the obligations, of independent States, so far as the conduct of hostilities is concerned, but no further. Their ships of war are accounted lawful cruisers, and their soldiers lawful combatants, but their governments cannot negotiate formal treaties or accredit diplomatic ministers. In Part III., Chapter I., will be found an account of Recognition of Belligerency.

(4) Corporations.

These may be considered under two heads:

(*a*) Ordinary Corporations. As owners of property they may come under the laws of belligerent capture.

(*b*) Privileged Corporations. A number of great trading companies have been allowed by the States under whose laws they were incorporated, to acquire territory in distant lands, to exercise dominion therein, and to make peace and war with native princes. Such bodies are subjects of International Law in an extraordinary and abnormal manner. As regards the natives of the districts assigned to them, they exercise many of the powers of sovereignty. As regards their own governments, they are subjects. In recent years the great colonising powers have granted charters to many such companies. For example, Germany in 1885 gave special concessions and jurisdiction within vast districts of her

sphere of influence in East Africa to the German East African Company. Great Britain has acted in a similar manner with regard to various British companies, the chief being the North Borneo Company, the Royal Niger Company, and the South Africa Company. Some idea of the magnitude and importance of their operations may be gathered from the fact that the Niger Company, whose charter dates from 1886, has more than three hundred treaties with native tribes, the validity of some of which is now (1897) in dispute between England and France. The territories within which power is thus gained tend to come gradually under the rule of the State which grants the charter.

(5) Individuals.

They may become subjects of International Law in a limited degree as owners of property captured in war, or because of acts done by them as private and unauthorised persons, and not as agents of a State.

B. **The Admission of New Subjects.**

The admission of new subjects within the pale of International Law takes place in three ways:

(1) When a State hitherto accounted barbarous is received into the family of nations by a

formal act on the part of those States, or the most important of them, who are already members of it.

Such was the case when in 1856 Turkey was by the Treaty of Paris admitted to participate in the advantages of the Public Law of Europe. No State is likely to gain admission unless it possesses

(*a*) A certain amount of civilisation. On this point it is impossible to lay down any definite rule. Each case must be judged on its own merits by the powers who have to deal with it.

(*b*) A fixed territory. International Law assumes that sovereignty is territorial. Nomadic tribes would therefore be unable to comply with the demands it makes upon its subjects.

(*c*) A certain size and importance. A small and unimportant community, lying apart from any of the main currents of human affairs, would be too insignificant to be noticed.

The Great Powers, or some of them, generally take the lead in admitting States such as we have described into the family of nations.

(2) When a new body politic formed by civilised men in districts hitherto left free from civilised control is recognised as an Independent State.

This was the case with the Republic of

Liberia, originally founded by American philanthropists as a settlement for emancipated negroes on the coast of Upper Guinea. Great Britain recognised its independence in 1848, and other States have since followed her example. In 1884 and 1885 the chief powers of Europe and the United States of America accorded a similar recognition to the Congo Free State, established by the International Association of the Congo, under the direction of the King of the Belgians.

(3) When a civilised political community, which has cut itself adrift from the body politic to which it formerly belonged and started a separate existence of its own, receives Recognition of Independence from other States.

Such Recognition is express or implied. The former is given by special treaty stipulations, the latter when conventions are negotiated, or other acts done such as independent States alone can be parties to. By recognising a new community no just ground of offence is given to any State from which it may have revolted, if it

(*a*) Has an organised Government, carried on in civilised fashion, and capable of dealing with other States in the manner prescribed by International Law.

(*b*) Possesses a fixed territory.

(*c*) Has actually or virtually brought to

an end in its own favour the contest between itself and the parent State.

Recognition of a revolted province or colony while a serious conflict is still going on is an act of unfriendly Intervention, which the parent State may, if it chooses, make into a cause of war. A colony or province, which obtains and keeps a *de facto* Independence, is sure to receive Recognition from all powers sooner or later, the quickness or tardiness of each being often determined by its political sympathies. Recognition by one State, or a body of States, in no way binds others; but when the Great Powers agree to recognise a community, the smaller States almost invariably follow their lead.

QUESTIONS

1. Define a State. What States are subjects of International Law?

2. Distinguish between the various kinds of Part-sovereign States, and show how far their subjection to International Law extends. Give an example of each kind.

3. Point out how corporations and individuals may become subject to International Law.

4. What is Recognition of Independence? Under what circumstances may it be given without offence?

HINTS AS TO READING

Part I., Chapter I., and Part II., Chapter I., of Hall should be read. In Wheaton Chapter II. of Part I.

bears upon our present subject, but the student should remember that many of the political and territorial arrangements therein mentioned have been changed since the text was written. Sir Travers Twiss in Volume I., Chapters II.-V., of the last edition (1884) of his *Law of Nations* brings information on these points down almost to the date of publication. Chapters VI. and VII. of Westlake's *International Law*, and Chapter IV. of Part I. of Lawrence's *Principles of International Law*, contain more recent information. But every one who wishes to have a real living knowledge of International Law must observe the changes that are continually going on around him, and follow carefully the international controversies of his time. The best account of the true doctrine of Recognition will be found in the three letters on that subject in *Letters by Historicus on some Questions of International Law.*

CHAPTER IV

THE SOURCES AND DIVISIONS OF INTERNATIONAL LAW

A. **Sources.**

By the sources of International Law we mean the places where its rules are first found. No rule can have authority as law unless it has been generally accepted by civilised States; but before the process of acceptance there must be a process of formation. In tracing rules up to their historical beginnings we discover four sources whence they arise. These are:

(1) The works of great publicists.

There are a number of writers on International Law, beginning with Gentilis and Grotius and ending with the leading publicists of our own day, whose works have influenced, and do still influence, the practice of States, and whose published opinions are appealed to in international controversies. Their views are valuable in proportion to their knowledge, ability, and impartiality. They apply admitted principles to doubtful

points, and thus often evolve rules which are afterwards embodied in the practice of States. On the other hand, their opinions may be overridden by contrary usage.

(2) Treaties.

With regard to these considered as sources of international rules, there is a wide difference of opinion. A school of Continental writers argue as if treaties, or rather a certain number of them arbitrarily selected, formed a *corpus* of International Law. On the other hand, most British and American publicists are disposed to lay little stress upon them. In order to arrive at just conclusions it is necessary to distinguish between different kinds of treaties. They may be classified as follows:

(*a*) Treaties assented to by all or nearly all civilised States, and avowedly altering or adding to the law, or making changes in the political status or distribution of territories. These are important in proportion to the number of States which sign them, and the length of time during which their provisions are observed. If, like the Geneva Convention of 1864, they are accepted by all civilised States they become legislative acts. If, without this formal acceptance by all powers, their rules get embodied in universal practice, like those

of the Declaration of Paris of 1856, they are sources of International Law. Such treaties are very rare. The Final Acts of the West African Conference of 1885 and the Brussels Conference of 1890 for the Suppression of the African Slave Trade, may be given as examples, in addition to the two previously mentioned.

(*b*) Treaties declaratory of the law. These, too, are rare; and sometimes rules which one party regards as declaratory, the other considers to be new rules. This was the case with the Three Rules of the Treaty of Washington of 1871. Declaratory treaties may be sources of law if their interpretation of it is generally accepted.

(*c*) Treatise signed by two or three States only, and stipulating for a new rule or rules as between the contracting parties. These are evidence of what International Law is not rather than of what it is; but if the new rule works well, and is gradually adopted by all other States, the treaties in which it originally appeared become sources of International Law. This was the case with the treaty of 1650 between Spain and the Netherlands, which introduced among Christian States the rule that the goods of an enemy were not subject to capture on

board a neutral vessel unless they were contraband of war.

(*d*) Treaties containing no rules of international conduct, but simply settling the matter in dispute between the parties to them. Most treaties belong to this class; and it is obvious that they do not affect International Law in any way.

Important treaties generally contain stipulations on a great variety of subjects. When, therefore, we speak of treaties of such and such a character, we must be understood to mean portions of treaties as well as entire documents.

(3) The decisions of Prize Courts, International Commissions, and Arbitral Tribunals.

Prize Courts are described in Part III., Chapter V. The decisions of the Judges of the more important of them are often most valuable sources of law; for they are the production of trained intellects applying recognised principles to new sets of circumstances. At the moment they merely decide the case on hand; but the reasonableness of the rules laid down often leads to their general acceptance, and thus in time they are incorporated into International Law. For instance, the Doctrine of Continuous Voyages, which is now a part of the law of capture at sea, was first elaborated and applied by Lord Stowell, a great English Prize Court Judge,

during the war with France at the end of the eighteenth century. In the same way International Tribunals, such as Conferences and Boards of Arbitration, sometimes lay down rules which win universal assent.

(4) State Papers, other than Treaties.

The government of every important State issues public documents of two kinds. It sends despatches and memorials to foreign powers, and it gives orders and instructions to its own servants. Specimens of either kind may become Sources of International Law when they deal with knotty points in so masterly a manner that their conclusions are generally adopted. Thus the British report of 1753 in the Silesian Loan Controversy placed beyond possibility of doubt the doctrine that a State cannot make Reprisals upon money lent to it by private persons belonging to another country; and the French Marine Ordinance of 1681 aided materially to clear up the uncertainties of maritime law.

It must be clearly understood that the consent of States alone can give authority to a rule, and that the best evidence of their consent is practice. Thus practice is, as it were, the filter-bed through which all that flows from the sources we have mentioned must pass, before it can enter the main stream of International Law.

B. Divisions.

The divisions of International Law given by many text-writers are either unscientific or useless. For instance, the distinction between a *necessary law*, which States are bound to obey because it is immutably founded on the nature of the society subsisting between them, and a *voluntary law* which they obey because they have expressly or tacitly consented to do so, is based upon the exploded theory of a Natural Code; and no one has even seriously set himself to work out in detail the ordinary distinction between a *customary law*, resulting from general usage, and a *conventional law*, resting upon express compact between States. It is best to regard International Law as a body of rules obeyed by the nations which have accepted them, because for various reasons they command the general assent of civilised mankind, and to divide it into heads according to the different kinds of rights possessed under it by States, and their corresponding obligations. Thus we get

Normal Rights and Obligations of States.

(1) Rights and Obligations connected with Independence.
(2) Rights and Obligations connected with Property.
(3) Rights and Obligations connected with Jurisdiction.
(4) Rights and Obligations connected with Equality.
(5) Rights and Obligations connected with Diplomacy.

Abnormal Rights and Obligations of States.
- (1) Rights and Obligations connected with War.
- (2) Rights and Obligations connected with Neutrality.

By the Normal Rights and Obligations of States we mean those which they possess simply as subjects of International Law. By the Abnormal Rights and Obligations of States we mean those which they possess when they have superadded other capacities to their capacity as subjects of International Law. The first belong to them in the ordinary circumstances of peaceful international life. They obtain the second, as an addition to or qualification of the first, in the extraordinary circumstances of belligerency or neutrality. We thus get a division of International Law into The Law of Peace, The Law of War, and The Law of Neutrality, each of which will be the subject of one of the three following parts.

QUESTIONS

1. What is meant by a Source of International Law? In what sense is it correct to speak of the great publicists as possessed of authority in disputes between States?

2. Estimate the importance to be attached to treaties as sources of International Law.

3. Why are the decisions of Prize Courts constantly quoted in books on Maritime Law?

4. Give the Divisions of International Law which

commend themselves to you, and state the reasons for your preference.

Hints as to Reading

Hall does not deal directly with the Sources of International Law, but some valuable remarks on Treaties considered as such will be found in his Introductory Chapter. At the end of his Part I., Chapter I., Wheaton discusses the whole subject; and in the same Chapter and at the beginning of Part II., Chapter I., his own and other views as to the proper Divisions of International Law are given. Lawrence's views are to be found in Part I., Chapter V., of his *Principles of International Law.* Chapter VI. of Volume I. of Twiss discusses at length *The Sources of the Law of Nations,* and Chapter II. of Halleck deals with the same subject in a somewhat different manner, as does Part I., Chapters III.-VIII., of Phillimore. The whole of Manning's Book II. is devoted to the consideration of it, as is also part of Lecture III. in Maine's *International Law.* For a pungent criticism of the doctrine that certain selected treaties form a *corpus* of International Law, see the latter part of *Some remarks on a Work of M. Hautefeuille* in the Letters of Historicus.

PART II

THE LAW OF PEACE

CHAPTER I

RIGHTS AND OBLIGATIONS CONNECTED WITH INDEPENDENCE

A. The Nature of the Right of Independence.

INDEPENDENCE may be defined as *The right of a State to manage all its affairs, whether external or internal, without interference from other States, as long as it respects the corresponding right possessed by each sovereign member of the family of nations.* It is the natural result of Sovereignty, and is therefore predicated by International Law of all sovereign States. Part-sovereign States are not fully independent, because by the conditions of their existence they are not allowed entire freedom of action in the department of external affairs. Independent and fully sovereign States are subject to restrictions imposed temporarily by events and circumstances; but such restraints are necessary conditions of social life, and not legal incidents of the political existence of the Communities subjected to them. They are not held therefore to derogate from complete independence. They spring from

(1) Treaty Stipulations.

These may be

(*a*) Freely entered into in order to solve a present difficulty by submitting for the future to some restraint upon liberty of action, as when by the Clayton-Bulwer Treaty of 1850 Great Britain and the United States agreed to make no acquisitions of territory in Central America.

(*b*) Imposed by superior force upon a State in no condition to resist, as when in 1808 Napoleon forbade Prussia to keep up an army of more than 40,000 men.

(2) The Corresponding Rights of other States.

Anarchy would result if every State shaped its policy without reference to the rights, interests, and susceptibilities of its neighbours. The right of independent action possessed by every sovereign State is therefore limited by the duty of not threatening the safety or outraging the honour of other members of the family of nations.

(3) The Superintending Authority exercised by the Great Powers and the United States of America.

In the settlement of certain great international questions, such for instance as th se connected with the Turkish Empire, the six

Great Powers of Europe acting together assume a primacy which other States tacitly recognise by accepting as a matter of course the arrangements made by them. Whenever a State thus conforms itself to the decisions of the Great Powers, its freedom of action is in a measure qualified by their superior authority. The United States seems inclined to claim on the American continent a position corresponding to that of the Great Powers in Europe.

B. Intervention.

Sometimes a State or a group of States interferes by force or the threat of force in the internal concerns of another State, or in questions arising between other States. Such interference is called Intervention. It must be distinguished from Mediation and Arbitration. The former takes place when a State makes suggestions for the settlement of a quarrel, at the request of the parties to it but without any intention of compelling them to accept its suggestions; the latter occurs when the parties themselves agree to refer their dispute to the judgment of others, on the understanding that the decision rendered will be accepted by both sides. The essence of Intervention is a curtailment of the independent action of the State or States against which coercion is used or threatened. Therefore cogent reasons are necessary to justify it. Many justifications have been alleged; but the only grounds con-

sistent with the principles on which International Law is founded are

(1) Self-preservation.

Ordinary rules may be set aside when the life of a nation, or its honour, or some interest essential to its position in the world, is at stake. The intervention by Austria in 1813 in the struggle between Russia and Prussia on the one hand, and the French Empire under Napoleon on the other, is a case in point.

(2) Treaty-right.

When a State has guaranteed the territorial integrity of another State, or the succession to its throne, or indeed any important arrangement concerning it, a right to intervene is thereby gained in the event of the arrangement in question being threatened by internal violence or external attack. The threat of Great Britain to give armed assistance to Belgium in 1870 in case Belgian territory was violated by France or Prussia, then at war with each other, was justified by her signature to the treaties of 1831 and 1839, which guaranteed the independence and integrity of the Belgian Kingdom.

(3) Preventing illegal Intervention on the part of another power.

On the principle that what a State may lawfully defend for itself it may lawfully defend for others, Intervention either to prevent or to bring to an end the unwarrantable Inter-

vention of another State is a legal act. It was on this ground that Canning justified the despatch of British troops to Portugal in 1826, in order to stop the assistance given by Spain to Don Miguel in the civil war between his followers and the constitutional party in the Portuguese kingdom.

The second and third of these grounds of justification for Intervention are technically sufficient, but not always morally convincing. The first ground is irrefragable from every point of view, provided that the danger to be guarded against is direct and immediate, not conditional and remote. Other grounds, such as the request of one of the parties, the preservation of the Balance of Power, the putting down or upholding of Revolution, have often been alleged, but they are inconsistent with admitted principles. Even Interventions to stop proceedings repugnant to humanity can hardly be brought under ordinary rules, though they may be justified under exceptional circumstances as acts above and beyond law.

C. General Considerations Applicable to Intervention.

The whole subject is full of difficulty. Practice alone is not a safe guide, for powerful States have too often been eager to intervene when they saw advantage to themselves in coming forward; and

they have justified their proceedings on specious but flimsy grounds. Moreover Intervention is often undertaken on several grounds, or by several States acting together, but from different motives and with different objects. In forming a judgment it must be remembered that

(1) Interventions carried on by the Great Powers, as in some sort the representatives of European civilisation, or by some State or States acting as their agent, are more likely to be just and beneficial than Interventions carried on by one power acting for itself only.

(2) Interventions by a temporary alliance of States have none of the authority attaching to the proceedings of the Great Powers, and are apt to end in disagreement, or even war, between the allies.

(3) Interventions in the internal affairs of States are greater infringements of their Independence than interference with their external action, and therefore require more weighty reasons to justify them.

The doctrine of absolute Non-intervention resulted from too great a reaction against the practice of indiscriminate Intervention. It is really based upon the assumption that a State has no duties to other States and to the great family of nations, a proposition which seems to carry with it its own condemnation.

QUESTIONS

1. Define the Right of Independence as possessed by sovereign States, and show how it may be restricted by special agreement without derogating from their sovereignty. Give instances of restrictions imposed by Treaty.

2. Prove that the authority exercised by the Great Powers sometimes limits the freedom of action of the smaller independent States.

3. What is Intervention? When do you consider it justifiable? Is it lawful to intervene in order to uphold the Balance of Power?

4. Discuss the doctrine of Non-intervention.

HINTS AS TO READING

In Part I. of Hall portions of Chapter II. should be read, and in Part II. the whole of Chapter VIII. In Wheaton Chapter I. of Part II. deals with our present subject. Halleck in Chapter IV. goes over much the same ground, as also does Twiss in Volume I., Chapter VII. Chapter II. of Abdy's edition of Kent's *Commentary on International Law*, and Part IV., Chapter I., of Phillimore's *Commentaries* should be referred to for a treatment of Intervention from an historical point of view. Its legal aspects are discussed in the letter on *The Perils of Intervention* in the Letters of Historicus, and in the early part of Lecture III. in Maine's *International Law*. The theory of the Primacy of the Great Powers is set forth by Lawrence in Part II., Chapter

IV., of his *Principles of International Law*, and in Chapter I. of the same Part he discusses Intervention. The diplomatic history of the interference of the Powers in the affairs of the Turkish Empire is given in Holland's *European Concert in the Eastern Question*. Chapter VIII. of Westlake's *International Law*, and Chapter II. of Part II. of Walker's *Manual of Public International Law* may be read with great advantage.

CHAPTER II

RIGHTS AND OBLIGATIONS CONNECTED WITH PROPERTY

A. Proprietary Rights of States.

STATES as corporate bodies are capable of owning property. Indeed our present International Law is to a great extent based upon the assumption that they possess proprietary rights over portions of the earth's surface; for, though the notion of territorial sovereignty is comparatively modern, it dominates so completely the rules observed between civilised States that it would be impossible for a nomadic tribe to come under them. A State's possessions may be territorial or non-territorial. Its non-territorial property consists of buildings and chattels, the rights of ownership over which are as a general rule matters between a government and its subjects. Public International Law does not deal with them, except in the case of belligerent capture, which, being a matter between hostile States, is treated of under the Law of War. A State's territorial possessions consist of

(1) The land, lakes, and rivers within that por-

tion of the earth's surface which it claims by legal title.

(2) The sea within a three-mile limit of its shores, and the narrow straits and bays along its coasts.

It must be noted that

(*a*) The three-mile limit was originally fixed because it was coextensive with the range of artillery, and there is a tendency now among jurists to favour an extension of marginal waters corresponding with the increased range of modern guns.

(*b*) When a strait is six miles or less in width, and both its shores belong to the same power, it is a part of the territorial waters of that power; but if it connects two portions of the High Seas, the vessels of other States have a Right of Innocent Passage through it.

(*c*) It is sometimes said that all bays, when the line drawn from headland to headland across the entrance is more than ten miles in length, are in law parts of the open sea, and free from the territorial authority of any power. But this rule is by no means universally accepted, and there are many exceptions to it.

(3) Islets fringing its coast. They are held to accrue to, or be attendant upon, the main mass of its territory.

B. **Modes of Acquiring Territory.**

International Law recognises as valid the title to territory which has been acquired in any of the following ways.

(1) Occupation.

This applies only to territory not held by a civilised State. Numerous controversies arose in the past as to the manner in which a valid title to such territory can be acquired; and in view of the modern scramble for Africa the question has regained its ancient importance. Several points connected with it are still unsettled; but probably what follows would be regarded as a fair statement of the rules which are supported by the best practice and the most respected authority. Title to territory open for appropriation is gained, not by Discovery, but by Occupation. Occupation may be described as *annexation* plus *settlement*. *Annexation* is a formal act, whereby the annexing State notifies its intention of incorporating the annexed territory with its dominions. Hoisting the national flag and reading a proclamation are the usual formalities, and they are gone through by officers specially commissioned to perform them. If subordinate authorities, acting on their own initiative, annex previously unoccupied territory, their act has no international validity unless ratified by the supreme government of the State. Annexation by private

persons is not only null and void, but cannot be rendered valid by subsequent ratification. *Settlement* is the planting down in the territory of a civil or military post or posts, the continuous existence of which must be maintained with more or less strictness. Entire abandonment for a considerable time will cause the abandoned territory to become again open to occupation. Annexation and settlement must exist in order to bring about valid Occupation; but it is immaterial which of the two precedes the other. The title gained by Occupation gives a right to a wider extent of territory than that which is covered by the original settlements; but many disputes have arisen out of attempts to define the area to which this doctrine of reasonable extension applies. The following rules are deductions from the history of these controversies:—

(*a*) One act of annexation and one settlement will give a title to the whole of an island, unless it be a very large one, and even to a group of small islands.

(*b*) Annexation and settlement on one shore of a continent do not give a title to the whole of it, or even to a strip of territory extending right across it to the opposite coast.

(*c*) Occupation of a large extent of coast gives a title up to the watershed of the rivers which enter the sea along the

occupied line of coast; but one or two settlements at the mouth of a great river are not sufficient foundation for a claim to all the territory drained by that river and its tributaries.

(*d*) When two States have occupied up to the opposite banks of a river, the boundary is drawn along the middle of the navigable channel.

Some of these rules can hardly be said to have received such general assent as would make them undoubted law. Moreover, there is room in their application for serious differences of opinion. It is therefore best for States to agree upon the boundaries within which they shall be free to occupy territory in countries newly opened to the enterprise of civilised mankind. This was done, for instance, with regard to East Africa and South-West Africa by Great Britain and Germany in 1890, with regard to West Africa by Great Britain and France in 1889 and 1890, and with regard to South Africa by Great Britain and Portugal in 1891. As the tribes inhabiting such territories are incapable of entering into the relations that subsist between subjects of International Law, they are ignored in so far as the law is concerned with the creation of a valid title to territory as between civilised powers. But the fact that some sort of consent has been

obtained from them in most of the recent Occupations is an acknowledgment of the duty of treating native races with justice. Probably the civilised parties to such agreements can gain no more by them than a moral claim to anticipate other civilised powers in effective Occupation.

(2) Cession.

This is the formal transfer of territorial possessions by one State to another. It takes place in consequence of transactions of various kinds, such as sale, gift, whether free or forced, and exchange.

(3) Conquest.

This is the retention of territory taken from an enemy in war, and the exercise therein of all the powers of sovereignty, with the intention of continuing to do so permanently. It differs from Cession by forced gift in that there is no formal international transaction which marks the exact time of the commencement of the new title, and from Prescription in that there is a definite act or series of acts, other than mere possession, out of which the title immediately arises. When a conquest in the military sense is confirmed by treaty of peace, the title to the conquered province is one of Cession, not of Conquest in the legal sense.

(4) Prescription.

This occurs when a State has held for a

great length of time territory with regard to which it can show no other ground of title known to International Law. The principle is recognised in order to avoid disputes about ownership; but no definite rules have been laid down as to the duration of the possession necessary to give a valid title.

(5) Accretion.

This occurs when the action of water adds to the land, or when islands are formed close to the territory of a State.

C. Different Degrees of Power over Territory.

States have begun to reserve for themselves territories over which they do not for the present exercise full rights of sovereignty. This has given rise to fresh problems with regard to the exact nature of the powers possessed by them over the districts in question. A State may exercise authority over territory as

(1) A Part of its Dominions.

In this case its powers are those of full sovereignty, both internal and external. (See Part I., Chapter III.)

(2) A Protectorate.

Over Protectorates the protecting State exercises powers of external sovereignty. Internal affairs are left in a greater or less degree to the native governments; but at least enough control over them must be taken

to enable the State to fulfil its obligations to other States in respect of the Protectorate. The protecting power has a right to require of other powers abstention from any attempt to acquire the protected territory, and from any direct political dealings with its inhabitants. On the other hand, it is bound to restrain those whom it protects from committing acts of hostility against neighbouring powers. Other matters are more uncertain. The exact limits of the rights and duties of a protecting State towards foreign countries and their subjects have not yet been settled.

(3) A Sphere of Influence.

This phrase applies to districts which are in the main unoccupied even by the power to which they are assigned, and are entirely free from the occupation of other powers. Over territory included in the Sphere of Influence of a State it does not necessarily exercise any direct control in either external or internal affairs; but it claims that other States shall not acquire dominion or establish Protectorates therein, whereas it is free to do so, if it chooses. The validity of such a claim depends entirely upon agreement. International Law gives to every civilised State a right to acquire unappropriated territory by Occupation and to establish Protectorates; but it can contract itself out of these rights with regard to certain districts in consideration of being allowed a

free hand in other parts, and when it has done so, it is bound by its treaty stipulations in this as in other matters. The last ten years have seen the making of many such agreements in order to avoid present disputes and possible wars in the future. Each binds only the parties to it and those other States which may recognise the arrangements arrived at. Good examples are to be found in the agreements made by Great Britain in 1890 with France and Germany, and in 1891 with Italy and Portugal, for the delimitation of their respective Spheres of Influence in large parts of Africa.

Spheres of Influence tend to become Protectorates, and Protectorates tend to develop into Colonies held in full dominion by the mother country. The plan adopted by Great Britain and several other States of allowing Chartered Companies to assume in the first instance powers and responsibilities which the Government hesitates to take upon its own shoulders, does not succeed in divesting the State of international burdens and obligations, and sometimes gives rise to disputes like the present (1897) controversy with France as to part of the territory claimed by the Royal Niger Company. By the General Act of the West African Conference, dated 26th February 1885, each of the signatory powers bound itself to notify to the others the assumption of any new Protectorate by it on the coast of Africa and any acquisition of fresh territory there

by means of Occupation. The parties to the Conference undertook the further obligation of establishing a reasonable amount of authority in the African territories occupied by them. Many disputes might be avoided, if these two rules could be made general in their application.

D. Questions connected with the Claims of States to Territorial Rights over Waters.

The claims of States to territorial rights over waters have led to the raising of a number of questions, some of which have only an historical interest, while others are matters of the utmost importance to-day. We will consider them in the following order.

(1) Claims to Sovereignty over the High Seas, and the Natural Straits which connect them.

In the middle ages many maritime States claimed territorial sovereignty over large tracts of open sea; but with the rise of modern International Law these claims were disputed. They have gradually become extinct, and the principle that the High Seas may not be appropriated by any power is now universally recognised. The last remnant of the old doctrines vanished when in 1893 an Arbitral Tribunal sitting at Paris decided against the American claim to exercise authority over Behring Sea for the purpose of putting down pelagic sealing. Territorial rights over narrow straits connecting two

open seas still remain; but they are limited by the Right of Innocent Passage, and the territorial power may not even levy tolls for profit.

(2) The Nature and Extent of the Right of Innocent Passage.

This may be defined as the right of free passage through the territorial waters of friendly States, when they form a channel of communication between two portions of the open sea. It is possessed by vessels of all States at peace with the territorial power, on condition that no acts of hostility are committed during the passage. It applies to ships of war as well as to merchant vessels. The rules forbidding the former, with certain exceptions, to pass up and down the Dardanelles and the Bosphorus rest upon special agreements negotiated in 1856 and 1871, and not on the common law of nations.

(3) The Position in International Law of Inter-Oceanic Canals.

The construction of the Suez Canal raised this question. International Law provided no rules for the use of so unprecedented a work. It was therefore necessary to settle its status by treaty stipulations. After negotiations extending over many years, a Convention was signed in 1888 by the representatives of the six Great Powers and Turkey, Spain, and the Netherlands. By this instrument the Canal was neutralised. That is to say, it was opened

in time of war as well as in time of peace to all ships, whether merchantmen or vessels of war, whether belligerent or neutral; but no acts of hostility were to be committed either in the Canal, or in its ports of access, or in the sea to a distance of three miles from those ports, nor was the Canal to be blockaded. These rules have hitherto worked well, but it must be noted that they have not been subjected to the strain of a great maritime war. We may hope that similar regulations will be applied by treaty to other great Inter-Oceanic Canals as they are made.

(4) The Use of Sea Fisheries.

When a fishery exists in the territorial waters of a State, its exclusive use belongs to subjects of that State; but outside territorial waters the subjects of all States are free to fish where they please. These simple rules are, however, often modified by conventions giving to subjects of one power the right to fish in certain specified portions of another's marginal waters. Sometimes great disputes arise as to the interpretation to be put upon these concessions, a good example being the controversy which has gone on for generations between Great Britain and France with regard to the exact nature and extent of the rights given to French fishermen along a portion of the coast of Newfoundland by the Treaty of Utrecht of 1713 and subsequent agreements.

(5) The Navigation of Great Arterial Rivers.

This question becomes important internationally when a great navigable river flows through the territory of two or more powers. The States which own the upper waters sometimes claim a right of free navigation to the sea; but the better view is that, strictly speaking, International Law confers no such right upon them. Within the present century, however, it has been given by special treaty in almost every case which has arisen among civilised powers, and a refusal to grant it would certainly be a gross violation of comity.

QUESTIONS

1. How far do the proprietary rights of States extend over seas and other waters?

2. What is required of a State in order that it may gain a valid title to territory by Occupation? Give what seem to you the best rules for deciding how much territory is gained by a single act or series of acts of occupation.

3. Endeavour to assign a meaning to the expression, Sphere of Influence. How far does International Law concern itself with (*a*) Protectorates, (*b*) Spheres of Influence?

4. Define the mutual rights and obligations of two riparian States, when the river flows during a portion of its course through the territory of one, and during the remainder through the territory of the other.

Hints as to Reading

In Hall Chapters II. and III., and also parts of Chapter VI., of Part II., and in Wheaton Chapter IV. of Part II., should be read. Part II., Chapter II., of Lawrence's *Principles of International Law,* deals with all the questions discussed in the foregoing Chapter. Chapter VI. of Halleck will be found useful, as also will Part II., Chapter III., of Walker. Westlake deals with recent problems in Chapter IX. of his *International Law.* Part I., Chapter II., of Woolsey's *International Law* may be read with advantage. Twiss deals with territorial rights at great length in his *Law of Nations,* Vol. I., Chapters VIII., IX., and XI., and Maine refers to them in Lectures III. and IV. of his *International Law.* Phillimore's *Commentaries,* Part III., may be used as a book of reference for instances of conflicting claims as to waters and of the various modes of acquiring territory.

CHAPTER III

RIGHTS AND OBLIGATIONS CONNECTED WITH JURISDICTION

A. General Rules on the Subject of Jurisdiction.

JURISDICTION is in the main territorial. Speaking generally, a State exercises jurisdiction over all persons and things within its territory. It has also a non-territorial jurisdiction, which it exercises chiefly, though not exclusively, over its own subjects by virtue of the tie of allegiance between it and them. With regard to territorial jurisdiction, we may lay down that each State has jurisdiction over

(1) All Persons within its Territory, with certain exceptions.

For purposes of jurisdiction persons within the territory of a State may be divided into the following classes:

(*a*) Natural-born subjects. Each State defines by its municipal law what circumstances of birth shall make a given individual its subject. Great Britain regards as subjects children born within

the British dominions, whatever their parentage, and children of British parents, wherever born, and even those whose Father or Grandfather on the Father's side were British. It is only when two or more States claim the same individual that international difficulties can be raised.

(*b*) Naturalised subjects. These are persons between whom and the State the tie of citizenship has been artificially created. The law of each State prescribes the necessary conditions and formalities for the reception of foreigners as citizens; Great Britain accepts aliens who have resided for five years in the United Kingdom, or been for five years in the service of the Crown, on condition that they take the oath of allegiance and continue to reside or serve as before. In cases where a country does not recognise change of allegiance on the part of its subjects, complications are apt to arise between it and States which have naturalised any of them.

(*c*) Domiciled aliens. These are persons of a foreign nationality who are permanently resident within a country. For most purposes they are subject to its jurisdiction, but it cannot require from them purely political services.

(*d*) Travellers passing through its territory. These are under its criminal jurisdiction,

and for some purposes under its civil jurisdiction also, but neither their personal status nor their political rights are affected by its law.

(2) All Things within its Territory, with certain exceptions.

For purposes of jurisdiction things within the territory of a State may be divided into the following classes:

(*a*) Real property. This is entirely under the control of the State where it is situated.

(*b*) Ordinary Personal property. In cases in which the owner is domiciled within the State where the property is situated the local law applies; but if the property is in one State and the owner is domiciled in another, the *lex domicilii* as a rule prevails.

(*c*) Its own ships, both public and private, in its waters. The authority over them is complete, and extends to all acts done on board them.

(*d*) Foreign merchant vessels within its ports and territorial waters. They are subject to the local jurisdiction, if it is exercised over them. If not, they are under the jurisdiction of the State to which they belong. Most powers, including Great Britain, exercise to the full their authority over foreign merchant-

men in their territorial waters. But France refuses to take cognisance of acts done on board them, unless the peace of the port is threatened, or persons other than the crew are concerned; and the French practice has been followed by several States in recent times.

With regard to non-territorial jurisdiction, we may lay down that each State has jurisdiction over

(1) All its Ships on the High Seas.

There can be no territorial jurisdiction on the open seas. Each State, therefore, exercises jurisdiction over all persons and things on board its vessels navigating them. The doctrine that a ship is a floating portion of the territory of the State to which it belongs has been invented to account for this rule; but it is obviously a fiction, and moreover a clumsy one, for if consistently applied it would deprive belligerents of their undoubted right to search neutral merchant vessels.

(2) All its Subjects outside the Territory and Vessels under its Jurisdiction.

In virtue of the personal tie of allegiance States undoubtedly possess jurisdictional rights over their subjects in foreign territory, or on board ships of a foreign State, or in countries belonging to no civilised power. But they do not as a rule attempt to exercise these rights, since in most cases the territorial jurisdiction is sufficient. They, however, punish

political offences against themselves committed by their subjects abroad, and also grave crimes of a non-political character. Sometimes, too, they assume control over acts done by their subjects in barbarous countries not under the dominion or protectorate of a civilised power. But, except in this last case, they cannot deal with an offender unless he comes within the territory or the vessels subject to their jurisdiction.

(3) All Pirates Seized by its Vessels.

There are three distinguishing marks whereby piratical acts may be known. They must be acts of violence; they must be done outside the territorial jurisdiction of any civilised State, that is to say, in nearly every case on the High Seas; and they must be committed by persons destitute of authorisation from any recognised political community. Piracy is a crime against the whole body of civilised States, and is therefore justiciable by the courts of any State whose cruisers can capture the offenders. It must, however, be noted that this applies exclusively to Piracy *jure gentium*. Offences that are made Piracy by the municipal law of a State, must be dealt with by its officers and tribunals only. The Slave Trade is not Piracy *jure gentium*. Consequently special treaty stipulations are required to authorise the capture of vessels engaged in it by cruisers of a State other than that to which the captured ships belong.

Great Britain has taken the lead in negotiating such agreements, and mainly as the result of her efforts all the maritime powers have at length become parties to the Final Act of the Brussels Conference of 1890, which, among other means for the suppression of the African Slave Trade by land and sea, granted a modified Right of Search, applicable to vessels of less than five hundred tons burden found within a maritime zone extending over the western part of the Indian Ocean.

Sometimes States claim to exercise jurisdiction over foreigners who have committed within foreign territory crimes against themselves or their subjects; but it is very doubtful whether such jurisdiction is recognised by International Law. All belligerent States have a limited jurisdiction over neutrals in order to restrain and punish violations of belligerent rights.

B. Exceptions.

There are exceptions to the rule that the jurisdiction of a State extends over all persons and things within its territory. These exceptions may be considered under the following heads:

(1) Foreign Sovereigns and their Suites.

When the head of a foreign State is visiting a country in his official capacity, he and his suite are entirely exempt from the local jurisdiction; but, on the other hand, he may not exercise any jurisdiction over his retinue,

further than to send home for trial urgent cases that may arise among them.

(2) Diplomatic Agents of Foreign States.

They are for most purposes free from the local jurisdiction when residing abroad as the accredited representatives of their country. Their immunities will be considered when we come to the subject of Legation and Negotiation (Part II. Chapter V.).

(3) Public Armed Forces of Foreign States.

When two States are at peace, the forces of one in the territory of the other are exempt in a greater or less degree from the local jurisdiction. Land forces and sea forces must be dealt with separately.

(*a*) Land forces may not pass through the territory of a friendly State without express permission. In the absence of special agreement on the subject of the jurisdiction to be exercised over them, they are not amenable to the local law, but their own officers are responsible for their good behaviour.

(*b*) Sea forces require no special permission to enter the territorial waters of a friendly State; but they can be excluded from the ports and harbours of any power which gives formal notice of its intention not to allow them to enter. Within foreign territorial waters they are for most purposes exempt from the

local jurisdiction. They ought, however, to respect the local law as far as possible; but the local authorities have no power to enforce it on board the ship, or take out of her persons who have found a refuge beneath her flag. They can but exclude the vessel, except in cases where a belligerent cruiser violates the neutrality of friendly waters, when force may be used to prevent or avenge the outrage. Most States instruct their naval commanders to receive on board political offenders and fugitive slaves who fly to them for refuge from imminent danger, but no other persons.

(4) Subjects of Western States Resident in Eastern Countries.

They have obtained by special treaties exemption from the local jurisdiction, and are subject instead to the jurisdiction of Consular Courts or Mixed Tribunals. The system rests entirely upon convention, and varies considerably in different Oriental countries.

C. **Extradition.**

Extradition is the surrender by one State to another of an individual who is found within the territory of the former, and is accused of having committed a crime within the territory of the latter. The best authorities hold that in the absence of

special treaty stipulations such surrender cannot be demanded as a right, though it may be granted as a matter of comity. Most civilised States are now bound to one another by Extradition Treaties, which generally, though not invariably, contain in some form the following stipulations:

(1) No one will be surrendered unless *prima facie* evidence of his guilt is given.
(2) No political offenders will be surrendered.
(3) No surrender will be made unless adequate assurances are given that the accused will not on that occasion be tried for any offence other than the crime for which he is surrendered.

Each treaty contains a list of the crimes on account of which surrender will be made. The chief difficulty arises in clearly distinguishing political from other offences. The British courts have held that the connection of an act with a political movement of which it forms a part gives it a political character.

QUESTIONS

1. Over what classes of persons does a State possess jurisdiction?

2. What is meant by naturalisation? Show how international complications have arisen as to subjects of one State naturalised in another.

3. For what reasons are Europeans exempt from the local jurisdiction in Oriental countries?

Describe briefly the system of jurisdiction under which they live.

4. What conditions have to be fulfilled before Great Britain will surrender to a foreign State a fugitive criminal found on British territory?

Hints as to Reading

Hall in Part II., Chapters IV., V. and VI. covers the subjects touched on in our present Chapter. Wheaton deals with them in Part II., Chapter II. Dana's notes to this portion of Wheaton's treatise are very valuable, especially those on Piracy. Part II., Chapter III., of Lawrence's *Principles of International Law* may be read with advantage, and much useful information will be found in Part III. Chapters XVII.-XXI. of Phillimore, and in Part II., Chapter III., of Walker. Baker's note at the end of Chapter VII. of Halleck may be referred to for information about Slavery, Chapter XI. gives an exposition of the system of Consular jurisdiction in Oriental countries, and in Chapter XII. will be found a discussion of the questions connected with National Character and Domicile. Towards the end of Part II., Chapter II., Section II., of Woolsey there is a good historical account of the efforts made by States to suppress the Slave Trade. Chapter III. of Abdy's Kent contains much information with regard to Consular Courts in the East; and Volume I., Chapter XIV., of Twiss traces historically the growth of the special privileges accorded to Europeans in the Turkish Empire. The paper on

The Territoriality of the Merchant Vessel in the Letters of Historicus is an able exposure of the fallacious theory that a ship is a floating part of the territory to which it belongs. Maine deals with the doctrine of ex-territoriality in Lecture IV. of his *International Law.*

CHAPTER IV

RIGHTS AND OBLIGATIONS CONNECTED WITH EQUALITY

A. The Doctrine of Equality.

By the doctrine of the Equality of States is meant that all of them who are fully independent have equal rights in the eye of International Law, not that all are equal in power or influence. The great publicists who founded modern International Law made equality one of the fundamental principles of their system; but it may be questioned whether it is still applicable without qualification. During the present century the Great Powers have exercised in many matters of European interest a Primacy inconsistent with it. They have, for instance,

(1) Established and neutralised the kingdom of Belgium.
(2) Made periodical settlements of the Eastern Question.
(3) Received States previously accounted barbarous, such as Turkey, within the pale of International Law.

(4) Received a new power, Italy, within the ranks of the Great Powers.

These proceedings, which are only examples taken from many of a similar kind, changed the legal position of other powers without their express consent; and the fact that the altered state of things was tacitly accepted by the smaller States seems to show that a superintending authority of some sort is regarded by them as vested in the Great Powers. It is analogous to political control in a State, and is quite consistent with equality in such matters as jurisdictional and proprietary rights. It is, moreover, in a very rudimentary condition; but it is sufficiently marked to be noted as modifying the generally received doctrine of perfect Equality. Something like the Primacy accorded in Europe to the Great Powers is claimed in America by the United States by virtue of what is termed the Monroe Doctrine. This expression of opinion as to the policy of the United States in external affairs was originally a protest against any attempt to extend the European state-system to the American continent. But in the hands of the successors of President Monroe it has developed into an assertion of a superintending authority, especially over territorial disputes between American and European States.

B. **Rules of Ceremony and Etiquette.**

Text-writers have generally discussed under the head of Rights of Equality matters of ceremony and

etiquette, as being the outward signs of equality, or the reverse, in rank and consideration. And in cases where it is impossible to give the same treatment to all, as, for instance, in the ordering of State festivals or the signing of international documents, rules have been established for reconciling the theoretical equality of States with some recognised order of precedence. We may consider them briefly under the following heads:

(1) Rules of Precedence for Sovereigns and their Representatives.

Sovereigns who are crowned heads take precedence of those who are not; but powerful Republics, such as France and the United States, rank along with the great monarchical States. The *alternat* and other devices are used to determine the order of the signatures to a great international document. The rank of the regular diplomatic agents of States is fixed by general agreement. The rules respecting it will be given when we come to deal with Legation and Negotiation. (Part II., Chapter V.)

(2) Titles and their Recognition by other States.

Each State confers what titles it pleases upon its ruler; but other States are not bound to recognise a new title, and they may impose conditions as the price of recognition.

(3) Maritime Ceremonials.

These are salutes to the national flag exchanged between ships, or between ships and forts. They were once considered as involving important international questions, but are now regarded simply as matters of courtesy. There are many rules concerning them. For instance, ships of war entering a foreign port salute first, unless the Sovereign or his representative is on board. When public vessels of different nationalities meet at sea, the ship of whichever of the two commanders is inferior in rank salutes first. In all cases salutes are returned, gun for gun.

All these ceremonial matters have lost the importance they once possessed. A good many disputes concerning them have been amicably settled; and it is hardly likely that the peace and good-will of nations will be seriously disturbed by them in the future, as it has sometimes been in the past.

QUESTIONS

1. Examine the doctrine of the Equality of States.
2. What are the chief rules of precedence for States and Sovereigns?
3. Write down the various devices for avoiding difficulties connected with the order of signing international documents.
4. Give the most important of the rules which govern maritime ceremonial.

Hints as to Reading

Hall does not deal directly with our present subject. Wheaton, Part II., Chapter III., should be read. The whole question, as regards both Primacy and Ceremonial, is considered by Lawrence in Part II., Chapter IV., of his *Principles of International Law.* Chapter V. of Halleck will be found useful, and also Part I., Chapter IV., of Woolsey. Chapter VII. of Westlake, and Part II., Chapter I., of Walker should be carefully read.

CHAPTER V

RIGHTS AND OBLIGATIONS CONNECTED WITH DIPLOMACY

A. Diplomatic Intercourse.

STATES now carry on their ordinary diplomatic intercourse by means of agents permanently resident at each other's courts. The practice of maintaining such agents is comparatively modern. It was begun by Louis XI. of France; but its general adoption dates only from the Peace of Westphalia of 1648. We must consider with regard to Diplomatic Agents

(1) The Classes into which they are divided, and their Relative Rank.

These questions gave rise to an immense number of disputes, till they were finally settled by the Congress of Aix-la-Chapelle in 1818. It was then agreed that Diplomatic Agents should be divided into four classes:

(*a*) Ambassadors and Papal Legates or Nuncios.

(*b*) Envoys and Ministers Plenipotentiary accredited to Sovereigns.

(*c*) Ministers Resident accredited to Sovereigns.

(*d*) Chargés d'Affaires accredited to Ministers of Foreign Affairs.

These classes rank in the order in which they are given above; and the members of any class take precedence among themselves according to the length of their residence at the court to which they are accredited. Only a few of the most powerful States send Ambassadors. Part-sovereign States do not possess full Rights of Legation and Negotiation.

(2) The Obligation to receive them.

A State which declined to carry on diplomatic intercourse with other States would put itself *ipso facto* outside the pale of International Law. But diplomatic relations between two States may for adequate reasons be temporarily broken off. Such a proceeding is, however, a sign of a grave difference between the two powers, and is often followed by war. On the other hand, a refusal to receive a particular person as diplomatic representative from another State is no just ground of offence, if the individual in question is

(*a*) Personally obnoxious to the Sovereign to whom he is accredited.

(*b*) One of the subjects of the State to which he is sent.

(*c*) Openly and avowedly hostile to the State to which he is sent or to its form of Government.

For similar reasons a State may demand the recall of a diplomatic representative resident at its court; and in extreme cases it would be justified in dismissing him, or even in sending him out of the country.

(3) The Formal Observances connected with their Reception and Departure.

A diplomatic minister receives from his own government on his appointment

(*a*) A Letter of Credence, setting forth the objects of his mission, and requesting that full credit be given to what he says on behalf of his Sovereign.

(*b*) Full Powers, giving him authority to act. In the case of a permanent legation at a foreign court, diplomatists are furnished, as a rule, with Letters of Credence, but not with Full Powers, unless a specific treaty is to be negotiated. In the case of a Conference, the plenipotentiaries generally take with them Full Powers, but not Letters of Credence.

(*c*) Instructions giving directions for his guidance in the negotiations he undertakes.

(*d*) A Passport, authorising him to travel to his destination.

On his arrival he presents his Letter of Credence at an audience of the Sovereign, unless he be a Chargé d'Affaires, in which case he has audience of the Foreign Minister only. A similar ceremony is gone through on his departure at the termination of his mission.

B. **Diplomatic Immunities.**

While resident at foreign courts diplomatic ministers are exempt in a very great degree from the operation of the local law. Their persons are inviolable, unless they are actually plotting against the security of the State to which they are accredited, in which case they may be arrested and sent out of the country. They are free from legal processes directed against the person, unless they voluntarily consent to waive their privilege and appear in court. Their wives, families, and servants share their immunities to a very considerable, though ill-defined, extent. Their property, too, has many immunities, especially the Hotel, or official residence. For most purposes it is under the jurisdiction of the State which the embassy represents, and except in extreme cases it may not be entered by the local authorities. For the purpose of detailed consideration diplomatic immunities may be classified as follows:

Connected with the Person:

(1) Immunities of the minister, and those of his suite who possess the diplomatic character.

(2) Immunities of his wife and children, those of his suite who do not possess the diplomatic character, and his servants.

Connected with Property:

(1) Immunities of the Hotel, and other property belonging to the embassy.

(2) Immunities of the private property of the minister in the country to which he is accredited.

(3) Immunities of goods sent from abroad for the use of the embassy.

C. **Consuls.**

Consuls are commercial, not diplomatic, agents. They reside abroad for the purpose of protecting the individual interests of traders, travellers, and mariners belonging to the State which employs them. They are under the local law and jurisdiction, and their residences are not, as a rule, held to be free from the authority of the local functionaries. But their official papers are not liable to seizure, they may not be compelled to serve in the army or militia, and soldiers may not be quartered in their consulates. In Oriental countries, however, special treaties give to the consuls of the Western Powers a privileged position

They exercise jurisdiction over their countrymen, their persons are inviolable, their residences may be used as asylums in the case of war or tumult, and in fact they possess more than the ordinary diplomatic immunities.

D. **Treaties.**

The treaty-making office in each State rests with those authorities to whom it is confided by the constitution of the State. As long as there is some power whose word can bind the whole body politic, foreign States have no right to enquire further. But other important matters connected with treaties are of international concern. We will consider them in the following order:

(1) The Nature and Necessity of Ratification.

Ratification is a formal ceremony whereby, some time after a treaty has been signed, solemn confirmations of it are exchanged by the contracting parties. No treaty is binding without ratification, unless there is a special agreement to the contrary. In discussing the question whether a State is bound to ratify, two classes of cases must be considered.

(*a*) When the ratifying power and the treaty-making power are vested in different authorities. In this case there can be no obligation to ratify; for other States know from the beginning that they have to secure the assent of both authorities.

(*b*) When the ratifying power and the treaty-making power are vested in the same authority. Here there is more doubt. Some contend that unless circumstances materially alter in the interval between negotiation and ratification the latter cannot be withheld. But modern practice seems to support the theory that if, after the signature of a treaty, a State changes its mind from any reason other than mere caprice, it may refuse to complete the bargain by ratification.

(2) The Rules of Interpretation to be applied to Treaties.

The older text-writers spent a vast amount of ingenuity on this subject; but since there is no international tribunal to enforce rules of interpretation, disagreements as to the meaning of treaties have to be settled by fresh negotiations between the States concerned, and are often decided according to the convenience of the moment, rather than in accordance with the principles of grammar or logic. All we can venture to lay down is that ordinary words should be taken in their ordinary sense, and technical words in their technical sense, and that doubtful sentences and expressions should be interpreted by the context, so as to make the treaty homogeneous, and not self-contradictory.

(3) The extent to which Treaties are binding.

In the eye of International Law the obligation of treaties is perpetual, unless they are destroyed by war, or a time is limited in their stipulations, or they provide for the performance of acts which are done once for all, such for instance as the payment of an indemnity. But it is obvious that as circumstances alter, the engagements made to suit them get out of date. The question of when a treaty is obsolete, and under what circumstances it may be broken or ignored, is one of morality, not of law. Wars and other events are constantly modifying international arrangements. Each change must be judged on its own merits, bearing in mind on the one hand that good faith is a duty incumbent upon States as well as individuals, and on the other that no age can be so wise and good as to make its treaties the rules for all succeeding time.

QUESTIONS

1. Trace the growth of the practice of sending permanent embassies to reside at foreign courts. How do diplomatic ministers rank among themselves?

2. What are the formalities observed at the reception and departure of a diplomatic minister?

3. Discuss the extent of the authority possessed over the person and the Hotel of a diplomatic minister by the State to which he is accredited.

4. Is a State bound to ratify the treaties into which it has entered?

HINTS AS TO READING

In Hall's Part II., portions of Chapter IV., and the whole of Chapters IX. and X. should be read. Part III. of Wheaton deals with our present subjects, as also does Part II., Chapter V., of Lawrence's *Principles of International Law*. Dana's note on *Diplomatic Immunity* should be read by those who have access to it. Much valuable information will be found in Vol. I., Chapters XII. and XIII., of Twiss. In Halleck, Chapters VIII.-XI., and in Phillimore, Parts V.-VIII., go very fully into questions connected with Diplomacy. Book III., Chapter II., of Manning, and Chapter III. of Abdy's Kent will repay perusal.

PART III

THE LAW OF WAR

CHAPTER I

THE DEFINITION OF WAR AND OTHER PRELIMINARY POINTS

A. The Nature of War.

WAR may be defined as *A contest carried on by public force between States, or between States and communities having with regard to the contest the rights of States.* This definition excludes Private Wars, which have long been obsolete in Europe, and it also ignores the Grotian idea of war as a punishment. Modern International Law does not attempt to decide upon the justice or injustice of war in general or any war in particular. It leaves such questions to International morality, and deals only with the creation of the relation of belligerency, and the legal effects thereby produced. These are the same in all wars, whether morally just or morally unjust. War is distinguished from other forcible modes of obtaining redress, which latter are held not to be inconsistent with the maintenance of peaceful relations between the States that are

parties to them. These methods may be classified under the heads of

(1) Reprisals.

The term is loosely used. Often it means simply a resort to the *lex talionis* in warfare. In the present connection it signifies the seizure or destruction by one State of property belonging to another State or its subjects in the territory or territorial waters of the latter State or on the high seas. The most recent instance is to be found in the operations of France against China in 1884, when a French fleet bombarded the arsenal of Foo-Chow.

(2) Embargo.

Here again we have an ambiguous term. As applied to an act of force falling short of war, it signifies the seizure of all the ships of the offending nation found in the ports of the aggrieved State, as, for instance, the seizure by Great Britain in 1839 of all Neapolitan ships found in the waters of Malta.

(3) Pacific blockade.

Pacific blockades differ from blockades carried on as warlike operations in that the ships of third powers cannot be seized by the blockaders, whereas in blockades carried on as part of the operations of a war neutral vessels which attempt to run in or out of a blockaded port may be captured and confiscated. The power which carries on a pacific blockade has no right to interfere with trade other than its

own and that of the offending State. In 1886 the Great Powers, with the exception of France, blockaded pacifically a portion of the coast of Greece, and detained none but vessels under the Greek flag. But in 1897 the Admirals engaged in the pacific blockade of Crete on behalf of the Great Powers claimed to prevent access to the island by any vessels. No opportunity arose for a court to pronounce upon the validity of this claim.

All the forcible modes of obtaining redress which hover between peace and war are abnormal, and capable of abuse. But International Law allows them, and undoubtedly they are sometimes useful as a means of bringing pressure to bear upon weak governments with less suffering than war would produce. A powerful State exposed to such treatment would undoubtedly retaliate by prompt hostilities.

B. **Declarations of War.**

Text-writers are divided as to the necessity of making formal Declarations of War. A review of the practice of States gives the following results:

(1) In the middle ages heralds were sent to give the enemy formal notice of hostilities. This practice died out in modern times, the last instance of it being in 1657.

(2) The practice of sending to the enemy a

Declaration of War next arose; but it never became a binding custom. The present century has seen over sixty wars or acts of reprisal begun by European States without formal notice to the power attacked, whereas there have been only eleven formal Declarations of War between civilised States since 1700.

(3) Since the middle of the last century it has been customary for the country beginning the war to publish a Manifesto within its own territory, and to send copies thereof to neutrals; but many wars have been commenced without the issue of such a document.

It is evident, therefore, that no Declaration or other notice is necessary. The legal effects of war date from the first act of hostility.

C. **Recognition of Belligerency.**

Every recognised State obtains as a matter of course all the rights of a belligerent if it chooses to go to war; but when a community not being a State in the eye of International Law resorts to hostilities, it may be endowed with the rights and subjected to the obligations of a State in respect of its naval and military operations, if other powers accord it what is called Recognition of Belligerency. They ought not, however, to do this unless their interests are affected by the struggle, and the community recognised.

(1) Possesses a Fixed Territory.
(2) Is ruled by an Organised Government.
(3) Carries on War in a Civilised Manner.

Recognition of Belligerency under any other circumstances is an unfriendly act towards the parent State. If the struggle is maritime and long-continued, recognition is almost forced upon the maritime powers, but land warfare can often be ignored. The parent State grants recognition in effect, though not in name, whenever from motives of humanity it treats its rebels, not as traitors, but as enemies. The controversy with regard to the recognition by Great Britain of the belligerency of the Confederate States in 1861 illustrates the whole question.

D. The Immediate Effects of the Outbreak of War.

The moment war begins certain changes in the pre-existing state of things are *ipso facto* brought about. These are

(1) The public armed forces of the belligerents are placed in a condition of active hostility.
(2) Private individuals are obliged to refrain from holding pacific intercourse with the enemy.

This rule is of itself fatal to the doctrine, which is also abundantly disproved on other grounds, that war is a relation between States only, and not between individuals as such.

(3) Some Treaties with the enemy, such as Boundary Conventions, are unaffected; some, such as Treaties of Alliance, are abrogated; some, such as Extradition Treaties, are suspended; and some, such as Treaties altering the ordinary rules of Maritime Capture, are brought into active operation.

The question of the effect of war upon treaties is very complicated. Numerous cases arise, especially with regard to great international instruments signed by many powers, as to which it is impossible to lay down beforehand rules of universal application. It is also difficult to decide when a treaty is merely suspended by war, and when it is entirely abrogated.

QUESTIONS

1. Define War. Is a formal Declaration of War necessary before hostilities can be lawfully begun?

2. What is meant by Recognition of Belligerency? Under what circumstances can it be given without offence to the parent State?

3. Discuss the doctrine that war is a relation of State to State, and not of individual to individual.

4. What is the immediate effect of the outbreak of war upon treaties between the belligerents?

HINTS AS TO READING

The subjects discussed in this Chapter are dealt with by Hall in Part I., Chapter III., Part II.,

Chapter XI., and Part III., Chapter I.; and by Lawrence in Part III., Chapter I., of his *Principles of International Law.* Boyd has inserted in Part I., Chapter II., of Wheaton a note on Recognition of Belligerency, and Part IV., Chapter I., of the text discusses *The Commencement of War and its Immediate Effects.* Wheaton's Book IV., Chapters I.-IV. of Manning, and Chapters XIV.-XVII. of Halleck will be found useful. Phillimore's *Commentaries,* Part IX., Chapters II.-VI., may be referred to. Twiss in Vol. II., Chapter II., deals with Declarations of War, and Walker gives valuable information about Pacific Blockade in Part II., Chapter IV., of his *Manual of Public International Law.*

CHAPTER II

THE ACQUISITION OF ENEMY CHARACTER

A. **Enemy Persons.**

THE enemy character may be likened to a taint which is more or less marked according to circumstances. Certain individuals are enemies in the fullest sense. They may be captured or slaughtered, and the arms they bear may be taken as spoil of war. Others are enemies only so far as to be liable to the loss of a small portion of their property. We will endeavour to arrange the various classes of enemy persons in a descending scale, beginning with those who are enemies in the strictest sense and ending with those who are tainted in the least degree with the enemy character.

(1) Persons found in the military or naval service of the enemy State.

These may be killed or wounded in fair fight, and, if captured, may be detained as prisoners.

(2) Seamen navigating the merchant vessels of the enemy State.

These may fight to defend their vessel from capture, but not otherwise. If taken, they are held as prisoners of war.

(3) Persons domiciled in an enemy country.

Whatever be their nationality, the property connected with their domicile is subject to the severities of war; and, if they remain in an invaded district, they may be called upon to perform certain services for the invaders (Part III., Chapters III. and IV.).

(4) Neutral subjects having houses of trade in the enemy's country.

Their property connected with these houses of trade is good prize, if captured at sea.

(5) Persons living in places in the military occupation of the enemy.

Their property proceeding from the places in question may be captured on the high seas.

Thus we see that citizenship and domicile are the two great tests of enemy character. Speaking generally, a man's domicile is his permanent residence, his home. For purposes of belligerent capture domicile is determined by length of residence and intent to remain.

B. **Enemy Property.**

The enemy character belongs to property, as to persons, in a greater or less degree according to circumstances. Adopting again the plan of a descending scale, we may say that International Law regards as enemy property

(1) Property belonging to the enemy State.

This may be taken in any place where it is lawful to carry on hostilities. There are, however, certain exceptions, which will be found in Chapters IV. and V. of the present Part.

(2) Property belonging to subjects of the enemy State.

This is confiscable if found at sea, unless it is connected with a neutral domicile acquired by its owner. On land it is exempt from capture as a general rule. But there are many exceptions, the chief of which will be found in Chapter IV. of the present Part.

(3) The produce of estates owned by neutrals in belligerent territory or in places in the military occupation of the enemy.

This retains the enemy taint as long as it remains the property of the owner of the soil.

(4) Property owned by neutrals, but incorporated in enemy commerce or subject to enemy control.

For instance, a ship owned by a neutral subject, but manned by an enemy captain and crew, and habitually engaged in the enemy's trade under pass from his government, would be accounted enemy property.

Thus we see that the nationality and domicile of the owner of property, the character of the place from whence it comes, and the nature of the control exercised over it, have to be considered in determin-

ing whether it possesses the enemy character. times it is difficult to tell whether a given under neutral or belligerent sovereignty. cases the character of the property found w or issuing from it, must be determined by to which the place is put, and the charac actions of the power exercising permanent control within it. It must be carefully no enemy property cannot be captured merely it is enemy property. Place, use, and circun have to be considered, as the next two Chap show.

QUESTIONS

1. How may neutral subjects acquire an character, and enemy subjects a neutral cha
2. What is the legal position of the m sailors of a belligerent in respect of actual fi
3. How may property acquire an enem acter?
4. Give instances showing the kind and of control which, when exercised by an ene property owned by neutral subjects, suf make it enemy property for purposes of bel capture.

HINTS AS TO READING

In Hall, Part III., Chapter VI., will b valuable, and in Wheaton, parts of Chapte II. of Part IV. Lawrence considers the q discussed in this chapter in Part III., Chapt

his *Principles of International Law;* and Walker treats of them in Chapter I. of his Part III. Halleck deals with Domicile and its consequences in Chapter XII., and Twiss in Volume I., Chapter X. On this point much valuable information will be found in Westlake's *Private International Law.*

CHAPTER III

THE LAW OF WAR WITH REGARD TO ENEMY PERSONS

A. Enemy Subjects found in a State at the Outbreak of War.

THE treatment of such persons has varied very much at different times. Practice with regard to them may be epitomised as follows:

(1) In the Middle Ages a right to arrest them was held to exist, but it was rarely put in force; and they were generally allowed time to depart.

(2) In the last century a number of treaties were made, giving them a considerable time for withdrawal; and a few such treaties have been made in recent times.

(3) Since the middle of the last century the general custom has been to allow them to remain; and during the present century a number of treaties have stipulated for such permission, which is, of course, always subject to the condition that they give no assistance

to the enemies of the State in which they reside.

We may conclude that the right to arrest has been taken away by contrary custom, and that, though the right to expel still remains, the exercise of it is looked upon with disfavour, unless a great emergency renders expulsion necessary either for the safety of the State, or to preserve the lives of those who are sent away.

B. **Enemy Combatants.**

The division of an enemy population into combatants and non-combatants is one of the most conspicuous triumphs of humanity. The old idea was that war delivered over the enemy and all that he possessed to unlimited violence. The modern idea is that only so much stress may be put upon him as is sufficient to destroy his power of resistance. This principle both limits the classes to whom violence may be applied, and defines the measure and extent of the violence when applied. Hence with regard to combatants

(1) Quarter is given except in very extreme cases.

Up to the close of the Thirty Years' War in 1648 it had to be formally stipulated for by treaty.

(2) Prisoners are cared for, and, if possible, exchanged.

Originally they were killed, or reduced to

slavery. In the Middle Ages the custom of ransom arose; and in modern times it has been superseded by exchange and release on parol. The following classes of persons, besides combatants, may be made prisoners of war:

(*a*) Merchant sailors, as being possible recruits for the fighting navy.
(*b*) Persons who are of direct benefit to the enemy if present in the field, as, for example, telegraphists, balloonists, and military police.
(*c*) Members of the enemy's royal family, and his ministers of State and great officials.

(3) The wounded and sick are properly treated.

Special provision for them began in 1190, when the Order of Teutonic Knights was founded, but it remained very meagre till quite recently. The Geneva Convention of 1864, which neutralised all persons and things connected with the care of the sick and wounded, was a great step in advance.

(4) The practice of refusing quarter to the defenders of a fortress taken by assault is now obsolete.

It died hard; but recent wars between civilised powers have afforded no instance of its revival.

(5) Certain means of destruction are forbidden.

They are regarded either as treacherous or

as unnecessarily cruel. In Chapter VI. of this Part an enumeration of them will be found.

C. Enemy Non-Combatants.

The old custom was to inflict every indignity from robbery to death upon the unarmed inhabitants of an enemy's country. Gradually and slowly more humane practices won recognition, till at the present time

(1) Non-combatants are exempt from personal injury, except so far as it occurs incidentally in the course of warlike operations, provided that they submit to the exactions of the enemy and observe the regulations laid down by him.

When they reside in territory under the enemy's occupation they are liable to be called upon to perform for him any service that is not distinctly military in its character, and to pay contributions and requisitions. Moreover, they must not, under pain of death, give assistance or information to their own side. A custom of allowing women and children to leave places about to be bombarded is springing up, though it has not yet obtained binding force.

(2) The inhabitants of captured towns are held to be entitled to protection.

They should not be abandoned to the violence of the victorious soldiery.

(3) Those who tend the sick and wounded are entitled to special protection under the Geneva Convention.

This is given to them on condition that they take no part in acts of hostility, and wear the badge of a red cross on a white ground.

The resolutions of the Brussels Conference of 1874 are most valuable as embodying the best practices of the great military nations with regard to enemy persons, both combatant and non-combatant; but they have not been formally adopted by States as obligatory upon belligerents. Unfortunately in dealing with barbarous foes resort is often had to practices far more cruel than those which are used in civilised warfare. There is grave danger lest this chartered inhumanity should seriously deteriorate the character of the forces which are guilty of it, and the nations which tolerate it.

QUESTIONS

1. Give a brief sketch of the treatment to which enemy subjects found in a State at the outbreak of war have been subjected at various times.

2. Trace the gradual growth of humane usages with regard to combatants in war.

3. On what conditions are non-combatants exempt from personal molestation by a victorious enemy?

4. State what you know of the Geneva Convention.

Hints as to Reading

In Hall, Part III., Chapters II. and IV. should be read, and in Wheaton those portions of Part IV., Chapters I. and II., which bear upon the subjects we have been considering. Dana's notes to this part of his edition of Wheaton should be studied by those who have access to them. Lawrence deals with the question in Part III., Chapter III., of his *Principles of International Law.* Lectures VII.-IX. of Maine's *International Law* will be found useful. Westlake discusses modern Continental theories in Chapter XI. Walker deals with hostile persons in Part III., Chapter II. Chapters XX. and XXXIII. of Halleck, and Part IX., Chapter VI., of Phillimore, may be referred to with advantage.

CHAPTER IV

THE LAW OF WAR WITH REGARD TO ENEMY PROPERTY ON LAND

A. Enemy Property found within a State at the Outbreak of War.

THIS may be divided into property of the enemy State and property of private individuals. In the rare cases in which any of the former is found in the territory of an enemy at the commencement of a war it will be confiscated, unless perhaps it happens to consist of books or works of art. Private property must be considered under the heads of

(1) Real property.

The earliest practice was to confiscate it. The next step was to appropriate the revenues only. In modern times there has been no interference with it.

(2) Ordinary Personal Property.

This was confiscated till quite modern times, but in recent wars it has been left untouched. Many States have entered into treaties forbidding its confiscation. Debts

due from subjects of one belligerent to subjects of the other are on the same footing as other forms of personal property. The attempt made by Great Britain in 1807 to support, as against Denmark, the doctrine that they were unconfiscable met with little favour. But they have not been confiscated in recent wars. They cannot be collected during the war; but the right to demand them revives as soon as peace is concluded. In fact, all ordinary kinds of personal property are so protected from confiscation by modern practice that it is doubtful whether the right to confiscate them survives in International Law.

(3) Debts due from a belligerent State to subjects of the enemy.

It is held that the national faith is pledged to them in so sacred a manner that they cannot be confiscated in time of war. This was fully established by the Silesian Loan controversy of 1752-56.

B. **Booty.**

Movables taken from the enemy as spoil in the course of warlike operations on land are called Booty. International Law gives spoil of war to the captors' State; but the laws of all civilised countries provide that the whole or a part of the captured goods shall be made over to the captors. Generally booty is sold, and the proceeds divided among all concerned in the capture according to a plan drawn

up by the authorities of the captors' State. If it is recaptured before it has been for twenty-four hours in the possession of the captors, or before they have brought it within their lines, it reverts to the original owners, and does not belong to the recaptors.

C. Belligerent Occupation and the Rights over Property gained thereby.

Till comparatively modern times no distinction was drawn between Occupation and completed Conquest, and the customs of warfare with regard to the appropriation and destruction of property by an invader were most severe. But from the end of the seventeenth and the beginning of the eighteenth century we may date the commencement of a decided improvement. In modern times the rights of an occupying invader have been sharply distinguished from the full rights of sovereignty gained by Conquest. But inasmuch as they are still great, an invader is apt to regard a district as occupied on very slight grounds. The Brussels Conference of 1874 attempted to reduce the claims of an invading army to reasonable proportions by explaining the nature of Occupation in the following words:

A territory is considered as occupied when it is actually placed under the authority of the hostile army. The occupation only extends to those territories where this authority is established, and can be exercised.

Thus, according to the most authoritative modern opinion, in order that an invader may lawfully exercise the rights of belligerent occupation in any district, he must have it in his firm possession. It is not enough that his scouts and advanced parties have penetrated into it. Occupation has most important legal consequences with regard to property. We will deal with it under the heads of

(1) State property.

With certain exceptions, such as legal documents, libraries, archives, and works of art, movables belonging to the invaded State may be appropriated and alienated. But immovables may not be alienated, though they may, as a rule, be used, and the rents and profits arising from them may be appropriated.

(2) Private Property.

It may be dealt with as follows:

(*a*) Immovables may be used or destroyed only so far as the necessities of war compel, and the profits arising from them may not be confiscated.

(*b*) Movables may not be seized unless they are of immediate use in war; but confiscation is allowed as a punishment for illegal acts done by the owners.

(*c*) Requisitions may be made, and contributions and fines levied, by the authorities of the occupying army. *Requisitions* are demands for articles needed for the daily use and consumption of the in-

vaders; *Contributions* are sums of money exacted over and above the ordinary taxes; and *Fines* are sums of money levied upon districts as punishments for offences against the invaders committed within them. Sometimes payment is made for what is taken by way of requisition, but it is not obligatory to do so.

With regard to all these matters the Brussels Conference of 1874 laid down important rules, most of which would probably be observed in case of war between civilised powers.

QUESTIONS

1. How may property acquire an enemy character?
2. What are the rules of International Law with regard to private enemy property found within a State at the outbreak of war?
3. Distinguish Booty from Conquests, Prizes, Requisitions, and Contributions.
4. Define an occupied district. What rights over property are gained by Occupation?

HINTS AS TO READING

Hall discusses the subjects noticed in this Chapter in Part III., Chapters III., IV., and VI. In Wheaton, Part IV., Chapter II. should be again looked through, and Dana's notes read, if possible. Part III.,

Chapter IV., of Lawrence's *Principles*, and Lectures X. and XI. of Maine, should be carefully studied. Book IV., Chapters IV. and V., of Manning will be found useful, as also will Chapters XXI., XXXIII., and XXXIV. of Halleck, and Volume II., Chapters III., IV., and VIII., of Twiss. Chapter XI. of Westlake is valuable and suggestive.

CHAPTER V

THE LAW OF WAR WITH REGARD TO ENEMY PROPERTY AT SEA

A. Belligerent Rights of Capture.

AT sea private as well as public property belonging to the enemy is liable to capture. The ships of a belligerent may be attacked and taken in their own ports and waters, in the ports and waters of the attacking power, and on the high seas, but not in neutral ports and waters. We may consider the various cases under the following heads:

(1) Public vessels of the enemy.

These may be captured unless they are

(*a*) Engaged exclusively in the work of exploration or discovery, and furnished with passes protecting them from hostile seizure on condition that they take no part in belligerent operations.

(*b*) Cartel ships, which are either public or private vessels engaged exlusively in services connected with the exchange of prisoners.

Probably an exemption would be made in the case of Hospital ships, designated as such before the war began and used exclusively for the care of the sick and wounded; but there is no binding rule of International Law to that effect.

(2) Private vessels of the enemy.

These may be captured with the exceptions of

(*a*) Those found in the ports of their foe at the outbreak of hostilities. At the commencement of recent wars it has been the custom to allow a reasonable time for the departure of the enemy's merchantmen, and it is hardly likely that such permission will be denied in the future.

(*b*) Fishing boats engaged in coast fisheries. But the immunity does not extend to deep-sea fishing boats, and may be withdrawn from in-shore boats if they are used for hostile purposes.

It is probable that vessels engaged exclusively in works of discovery or humanity would be exempt; but there is no general usage to support such a rule.

(3) Goods of the enemy found on board enemy vessels.

These may be captured, with the possible

exceptions of *belles lettres*, works of art, and hospital stores. The second article of the Declaration of Paris of 1856 forbids the capture of goods of an enemy found under a neutral flag unless they are contraband of war (Part IV., Chapter V.).

The ransom of ships and goods captured by the enemy is recognised by International Law; but Great Britain and many other States forbid their subjects to resort to it. Property captured by the enemy at sea and then recaptured is restored to the original owners under conditions laid down by the law of each State for its own naval forces. Great Britain restores if the recapture takes place during the same war, on payment to the recaptors of a salvage of from one-eighth to one-fourth of the value of the recaptured property.

B. **The Right of Search.**

This is the right to stop and visit and overhaul vessels on the High Seas, in order to discover whether they or the goods they carry are liable to capture. It is ancillary to the rights of capture, which would be useless without it. It should be noted that

(1) The Right of Search is a strictly belligerent right, and, except as regards pirates, does not exist in time of peace unless expressly granted by treaty for some special purpose.
(2) The presence with neutral merchantmen of

a public vessel of their own State as escort and protector does not, in the absence of special agreement, exempt them from belligerent search (Part IV., Chapter III.). If neutral merchantmen accept the protection of a belligerent ship of war they render themselves *ipso facto* liable to capture by the other belligerent.

Most civilised States have conceded to one another a limited Right of Search in time of peace for the purpose of putting down the African Slave Trade (Part II., Chapter III.).

C. **Prize Courts.**

For the protection of neutrals, and the proper adjustment of the claims of captors, all civilised States establish Prize Courts in their territories to decide questions of proprietary right in captures made by their cruisers. We may lay down with regard to them that

(1) Though they are Municipal Tribunals, they administer International Law.

(2) Their jurisdiction covers not only captures made by cruisers of their own country when it is at war, but also certain exceptional captures, made when it is at peace, by belligerent vessels which have violated its neutrality.

(3) They may sit in territory belonging to the captor or occupied by him, or in territory of the captor's ally in the war, but not in neutral territory.

(4) Their procedure takes the form rather of an inquiry by the Government than of an ordinary trial between litigants.

(5) The State is responsible for their acts; and if they give unjust decisions, it is bound to grant satisfaction to the parties aggrieved, especially when they are neutral subjects.

When a capture is made at sea, it is the duty of the capturing cruiser to send the captured vessel, with its crew, its papers, and all things on board it, to the nearest Prize Court of the captor's country for adjudication. But if it is impossible or exceedingly dangerous to navigate the vessel to a port where a Prize Court is sitting, she may be destroyed at sea, if an enemy, or released, if a neutral.

QUESTIONS

1. Under what circumstances may enemy goods be captured on the High Seas?

2. Give the British rules as to the recapture of vessels taken by the enemy.

3. Explain the nature and extent of the Right of Search.

4. What are Prize Courts? Over what classes of cases have they jurisdiction? Examine the peculiarities of their procedure.

HINTS AS TO READING

In Hall, Part III., the greater part of Chapter III. and the last section of Chapter V. should be read

and also Chapter X. of Part IV. In Wheaton, Chapters I. and II. of Part IV. will still repay perusal, especially if it is possible to read with them Dana's notes. Lawrence deals fully with our present subject in his *Principles of International Law*, Part III., Chapter V., as does Halleck in Chapters XXII., XXVII., XXXI., XXXII., and XXXV., and Twiss in Vol. II., Chapters V. and IX. The letter on *The Right of Search* in the Letters of Historicus is an able exposition of undoubted law, and a trenchant exposure of popular fallacies. Lectures V. and VI. of Maine form a useful commentary on the practices and rules of maritime warfare. Portions of Chapter XI. of Westlake, and of Part III., Chapters II. and III., of Walker, may be read with great advantage.

CHAPTER VI

THE AGENTS, INSTRUMENTS, AND METHODS OF WARFARE

A. Agents.

THE soldiers and sailors of the regular army and navy of the belligerents, including fully organised militia and reserves, are of course lawful agents of warfare. But doubts and disputes have arisen as to the employment of certain kinds of persons. Some of the most difficult and controverted points of modern International Law arise with regard to them. We will consider them under the heads of

(1) Guerilla Troops.

It is generally held that they are lawful combatants if they wear a distinctive badge recognisable at a distance, carry arms openly, observe the ordinary rules of war, and act under the orders of a person responsible for his subordinates.

(2) Levies *en masse*.

When the inhabitants of districts not occupied by an enemy rise in obedience to the orders

of their government, and are armed and organised under its authority, there can be no doubt that they are lawful combatants. With regard to spontaneous risings on the approach of an invader, there is more difficulty; but the better opinion is that they are legal if the armed populations respect the laws of war. It is certain, however, that an insurrection of the inhabitants of occupied districts against an invader will not be regarded by him as a lawful act of war.

(3) Savage Troops.

The practice of employing them as allies and auxiliaries is reprehensible, but cannot be called illegal. If they are regularly embodied and drilled, and led by civilised officers, they can undoubtedly be used; and it is the custom in warfare with barbarous tribes to accept the aid of other barbarians organised and led in their own fashion.

(4) Spies.

They may be used by commanders, but if they are caught by the other side the penalty is death.

With regard to most of these agents, the resolutions of the Brussels Conference of 1874 afford valuable information.

B. **Instruments and Methods.**

We may discuss these under the following heads, bearing in mind that all instruments and methods

of destruction not expressly forbidden by International Law are allowed. It will not be necessary, therefore, to deal with any but the prohibited and doubtful cases.

(1) Privateers.

These were vessels owned and manned by private persons, but authorised by the State on certain conditions to depredate on the commerce of the enemy. They are forbidden by the Declaration of Paris of 1856, which has been signed by nearly all civilised States and observed even by those who have not signed it.

(2) A Volunteer Navy.

Its legality depends upon the closeness of the control exercised over the ships and crews by the authorities of the State which employs them.

(3) Assassination.

Treachery is the characteristic which distinguishes assassination from the slaughter allowed in warfare. A treacherous attack is forbidden; killing in a surprise is lawful.

(4) Poison.

The poisoning of food and water likely to be used by the enemy is unlawful, as is also the use of poisoned weapons.

(5) Projectiles.

Those which produce unnecessary suffering are forbidden. It is unlawful to use explosion bullets weighing less than fourteen ounces, or

to load guns with scraps of iron, glass, and other kinds of rubbish.

(6) Devastation.

The devastation of territory is lawful when immediate and overwhelming military necessity can be pleaded as a justification of it. Otherwise it is regarded as barbarous and illegal. But the devastation by a population of their own country in order to check the advance of an invader is an act of heroic self-sacrifice, which the laws of war in no way forbid.

(7) Stratagems.

Those which violate the general understanding between belligerents are not allowable. All other ruses may lawfully be resorted to.

Questions

1. Under what circumstances can bodies of men not enrolled in the regular army of a belligerent State claim to be regarded as lawful combatants?

2. What are privateers? Write a brief account of their rise and fall as agents of naval warfare.

3. Give the laws of war with regard to spies.

4. What instruments and means of destruction are forbidden by International Law.

Hints as to Reading

Part III., Chapter VII., of Hall will be found useful. In Wheaton portions of Chapter II. of Part IV. bear

on the subjects of this Chapter. Part III., Chapter VI., of Lawrence's *Principles* goes over the ground we have just traversed. Chapter XVIII. of Halleck may be read with advantage. In Chapter VI. of Abdy's edition of Kent's *Commentary on International Law*, and in Twiss, Vol. II., Chapter X., will be found an historical account of privateering, and a discussion of various questions connected with it. Maine deals in Lectures VI.-VIII. with most of the questions raised in this Chapter, and some of them are discussed by Westlake in Chapter XI.

CHAPTER VII

THE NON-HOSTILE INTERCOURSE OF BELLIGERENTS AND THE LEGAL EFFECTS OF THE CONCLUSION OF PEACE

A. The Non-hostile Intercourse of Belligerents.

DURING war a certain amount of more or less amicable intercourse takes place between the belligerents. This may be considered under the heads of

(1) Flags of Truce.

These are white flags used as signals when one belligerent wishes to send a message to the other in the field. The bearers of them may not be fired upon, injured, or taken prisoners; but a belligerent may refuse to receive them at all, or may receive them only on conditions.

(2) Passports and Safe-conducts.

These are permissions to travel given by a belligerent government to subjects of the enemy. Passports refer to persons, safe-conducts to persons and things.

(3) Licences to trade.

These are *general* when a State grants

permission to all its own subjects, or all enemy subjects, to trade in particular articles or at particular places; *special* when permission is granted by the State or one of its commanders to particular individuals to trade in the manner described in the licence. Neutrals, too, may receive licences to engage in a trade closed to them by the ordinary laws of war.

(4) Cartels.

These are agreements between belligerents as to the mode of conducting such intercourse as they allow in war time. The term is applied especially to agreements with regard to the exchange of prisoners.

(5) Capitulations.

These are agreements for the surrender upon conditions of a fortified place, or a military or naval force. Every commander may make them with regard to the places or forces under his control; but if he exceeds his powers the agreement must be accepted by his commander-in-chief before it is valid, and if political conditions are stipulated for by naval or military authorities, the capitulation is void unless ratified by their government.

(6) Truces and Armistices.

These are temporary suspensions of hostilities over the whole or a portion of the field of warfare. Any commander may make them in order to meet the temporary needs of his own forces; but a general armistice covering the whole field of warfare can be made only

by the supreme power in the state. Such an armistice is generally concluded as the first step towards entering upon negotiations for peace.

There are other *commercia belli*, but they are hardly important enough to be classified.

B. The Legal Effects of the Conclusion of Peace.

War between civilised States is almost invariably terminated by a Treaty of Peace. It is to be noted that

(1) As soon as peace is made all rights incident to a state of war cease, unless the treaty itself fixes a future date for the termination of hostilities. Not only must there be no more fighting, but requisitions and contributions can no longer be levied, nor prisoners of war detained as such.

(2) At the conclusion of peace all private rights suspended during the war are revived. Contracts not invalidated or rendered impossible of fulfilment by the war can be enforced, and private debts sued for.

(3) As between the States lately belligerent the principle of *uti possidetis* holds good where there are no express stipulations in the treaty of peace. But treaties provide almost as a matter of course for the settlement of all important matters.

Completed Conquest has all the legal effects of

Cession by Treaty. But transfer of territory by mere Conquest is very rare in modern times. It is almost always made over by treaty, a course which has legally the great advantage of fixing the exact date when the new sovereignty and the new order of things based on it commence.

QUESTIONS

1. Give the rules of International Law with regard to flags of truce.

2. Describe the nature of cartels. What are cartel ships, and under what regulations do they sail?

3. What is an armistice? Who have authority to make such agreements? What conditions are implied when one is concluded?

4. Enumerate the chief legal effects of the conclusion of peace.

HINTS AS TO READING

Hall discusses the subjects of this Chapter in Chapters VIII. and IX. of Part III. Wheaton deals with them in a few pages of Chapter II., and the whole of Chapter IV. of Part IV. They are set forth in Lawrence's *Principles of International Law*, Part III., Chapters VII. and VIII. In Halleck, Chapters XXIX., XXX., and XXXIV. should be referred to. Part XII. of Phillimore, especially the first two Chapters, and Lecture X. of Maine, may be read with advantage, as also may Part III. Chapter IV., of Walker.

PART IV

THE LAW OF NEUTRALITY

CHAPTER I

THE NATURE OF NEUTRALITY, AND THE DIVISIONS OF THE LAW OF NEUTRALITY

A. The Nature of Neutrality.

NEUTRALITY may be defined as *The condition of those States which in time of war take no part in the contest, but continue pacific intercourse with the belligerents.* On their part, therefore, it is a continuation of the previously existing state of peace; but nevertheless there are affixed to it by International Law certain rights and obligations which do not exist in a time of universal peace, and these are set forth and defined in the Law of Neutrality. We may discuss the nature of neutrality under the following heads:—

(1) The Kinds into which it has been divided. These are given by text-writers as

(*a*) Perfect neutrality, which is simply neutrality of the ordinary type, involving complete impartiality, and equality

in the treatment of both sides in the war.

(*b*) Imperfect or qualified neutrality, which is described as neutrality modified by treaty engagements, the theory being that a State which had covenanted before the war to send a contingent to the army or navy of one of the belligerents, or to grant it special and exclusive privileges in matters connected with war, should be allowed to do so without forfeiting its neutral character.

The tendency of practice for the last century has been to insist upon perfect neutrality in all cases; and as imperfect neutrality is quite contrary to the principle of impartiality which is at the root of modern ideas upon the subject, it may be pronounced illegal now that custom no longer supports it.

(2) The Difference between Neutrality and Neutralisation.

In ordinary neutrality is involved the two elements of abstention from taking part in an existing war, and freedom to engage in it or not to engage in it at pleasure. In neutralisation the first element remains the same; but instead of the second there is imposed by International Law an obligation not to fight except in the strictest self-defence, or to abstain from warlike use of certain places and things which have had the neutral character stamped upon

them by convention. This condition of enforced neutrality may be imposed on

(*a*) States, such as Belgium and Switzerland, whose independence and perpetual neutrality are guaranteed by the Great Powers of Europe.

(*b*) Provinces, such as Savoy and the Ionian Islands of Corfu and Paxo, which have been neutralised by the Great Powers, but whose position, as portions of States which are free to make war when they think fit, is certainly anomalous.

(*c*) International Waterways, such as the Suez Canal, which was neutralised by the Convention of October 1888.

(*d*) Persons and things, such as those connected with the care of the sick and wounded in war. These were neutralised by the Geneva Convention of 1864.

As neutralisation alters the rights and obligations of all the States affected by it, either their express consent, or the agreement of the Great Powers acting as in some sort their representatives, is necessary in order to give it validity. The word is often used in a loose and inaccurate manner to cover undertakings in abatement or mitigation of war, entered into by one or two States. We must, therefore, remember that there can be no true neutralisation without the complete and per-

manent imposition of the neutral character by general consent.

B. The Divisions of the Law of Neutrality.

Neither Greeks nor Romans had names exactly corresponding to our terms *neutral* and *neutrality*. Indeed, these terms did not come into general use till about the middle of the eighteenth century,—a sure proof that no great body of law had grown up with regard to the things signified by them. In the Middle Ages it was common for States who were ostensibly no parties to a war to commit flagrant acts of hostility, and for belligerents to violate neutral territory with scant ceremony. So rudimentary was the law on the subject that even Grotius has but one chapter on neutrality. But from his time a number of rules concerning it rapidly grew up, till now they form one of the largest and most important portions of International Law. The Law of Neutrality falls naturally into two divisions. We will deal with it under the heads of

(1) Rights and Obligations as between Belligerent States and Neutral States.

With regard to these we may mark the following stages in the growth of opinion:

(*a*) As soon as it was recognised that belligerent and neutral States had duties to one another, it was held that the neutral must measure its duty to the belligerent by its view of the justice of

the quarrel, and that the belligerent must allow the neutral to abstain from war, and must not violate its sovereignty on trivial pretexts. This was the view of Grotius, and it may be roughly described as the accepted doctrine of the seventeenth century.

(*b*) The next stage is reached when it is generally considered wrong for a neutral to give assistance to a belligerent unless bound to do so by treaty made before the war, and for a belligerent to violate neutral sovereignty without grave necessity. This may be roughly described as the accepted doctrine of the eighteenth century.

(*c*) Finally, we get the view that the neutral must refrain from giving aid to a belligerent under any circumstances, and that it must also restrain its subjects from certain acts calculated to assist one belligerent to the detriment of the other, while belligerents on their part must scrupulously respect neutral sovereignty. This may be roughly described as the accepted doctrine of the nineteenth century.

This part of the Law of Neutrality is in the main due to the development of the ethical principles that the neutral is bound to show perfect impartiality, and the belligerent to

respect neutral sovereignty. The process of growth still continues; and, though at the present time the rights of neutral States are tolerably well defined, there is great doubt as to the full measure of their obligations, which it has been the tendency of modern times to enlarge.

(2) Rights and Obligations as between Belligerent States and Neutral Individuals.

From the infancy of maritime law belligerents have had the right of putting a certain amount of restraint upon the trade of neutral merchants. If a neutral individual engages in a forbidden trade, the belligerent State does not complain to the neutral State, but it strikes at the neutral individual directly, and punishes him in its own Prize Courts. The neutral State does not appear in the matter at all, unless the punishment is not warranted by International Law, in which case it claims reparation for its injured subject. We may consider this portion of the Law of Neutrality under the heads of

(*a*) Ordinary Commerce.
(*b*) Blockade.
(*c*) Contraband Trade.
(*d*) Unneutral Service.

The law on these subjects arises from the conflict of the two principles that neutrals have a right to continue their peaceful pursuits undisturbed by belligerents, and

that belligerents have a right to continue their warlike operations undisturbed by neutrals. It is made up of rules settling which of them shall prevail in given cases. In these matters the tendency of modern times is to enlarge the rights of neutrals.

QUESTIONS

1. Define Neutrality. Into what kinds has it been divided? Examine the propriety of the division.

2. Explain the exact position in International Law of a Permanently Neutralised State. Give a list of such States.

3. Show by a short historical review that the obligations of neutral States have grown enormously within the last century, while neutral individuals have enjoyed a corresponding growth of rights.

4. Give the divisions of the Law of Neutrality, and point out the principles on which they are made.

HINTS AS TO READING

Hall's treatment of Neutrality is exceedingly full and able. Chapter IV. of Part I. should be read as a preliminary exercise. Chapter II. of Part IV. deals with the subjects discussed in this Chapter, as does also Part IV., Chapter I., of Lawrence's *Principles of International Law.* Some of them are considered in the earlier sections of Chapter III., Part IV., of Wheaton. Manning in Book V.,

Chapters I., III., and IV. deal historically with the growth of neutral rights. Volume II., Chapters XI. and XII., of Twiss may be referred to. Chapter III., Section VI., of *Political and Legal Remedies for War*, by Sheldon Amos, gives instances of treaty provisions directed towards conferring the neutral character.

CHAPTER II

RIGHTS AND OBLIGATIONS AS BETWEEN BELLIGERENT STATES AND NEUTRAL STATES

A. The Obligations of a Belligerent State towards Neutral States.

INTERNATIONAL Law defines with considerable clearness the obligations of a belligerent State in its relations with neutral States. The following are the chief of them:

(1) Not to carry on hostilities within neutral territory.

(2) Not to make on neutral territory direct preparations for acts of hostility, such as fitting out armed expeditions, recruiting men, or obtaining supplies of arms and warlike stores, and not to use neutral territory as a base of operations.

(3) To obey all reasonable and impartial regulations made by neutrals in such matters as the disarming and interning of its troops driven across neutral frontiers, the admission of its cruisers and their prizes into neutral ports,

the length of time they may stay there, and the amount of innocent supplies they may take in.

(4) To make reparation to any State whose neutrality it may have violated.

Belligerents have no right to seize, under the name of Angary or Prestation, neutral merchant vessels found within the waters controlled by them, for the purpose of using such vessels as transports, or in furtherance of warlike operations in any way. Such a proceeding is an outrage for which apology and satisfaction are due.

B. The Obligations of a Neutral State towards Belligerent States.

The portion of International Law which deals with the obligations of neutral States in their relations with belligerent States is in a very unsettled condition. Some of its rules are clear and definite. With regard to others there is much doubt; for opinion has changed greatly in modern times, and no fixed usage has as yet grown up. We may say that a neutral State is bound

(1) Not to give armed assistance to either belligerent.

Even limited aid given in accordance with a treaty made before the war would not be allowed now.

(2) Not to allow the passage of belligerent

troops through its territory, or the levying within it of soldiers for belligerent service.

There was some doubt about this; but both practice and opinion in modern times are in favour of the prohibition.

(3) Not to sell or give armed ships and other instruments of warfare to a belligerent.

It is, however, doubtful whether a neutral government is bound to stop its ordinary public sales of old stores merely because belligerent agents may buy them.

(4) Not to lend money to a belligerent.

It need not, however, restrain its subjects from doing so, nor from trading with a belligerent in arms and munitions of war.

(5) To disarm and intern all belligerent troops that pass into its territory, and set at liberty all prisoners of war found therein.

The crews of belligerent ships of war in neutral ports, and any prisoners there may be on board such ships, are exceptions to this rule. They cannot be dealt with by the neutral; but, if the prisoners escape to the shore, the local authorities must neither surrender them nor permit the belligerent force to recapture them.

(6) Not to allow belligerents, or its own subjects, to fit out warlike expeditions within its dominions, or increase therein the warlike force of any belligerent ship or expedition.

But belligerent cruisers may be allowed, under reasonable conditions imposed by the

neutral, to take in coals and provisions, and undergo repairs, in neutral ports.

(7) Not to allow its subjects to accept letters of marque from a belligerent, or enlist within its territory in belligerent service, or leave its territory in considerable numbers for the purpose of so enlisting.

(8) To make reparation to any belligerent who may have been seriously and specifically injured by failure on its part to perform its neutral duties.

The neutral State is bound to exercise all reasonable care and diligence to perform the duties imposed upon it. But if proper precautions fail, it cannot be held responsible.

In all cases of breach of neutrality, whether in the circumstances of a capture, or in the fitting out of the capturing vessel, the neutral must restore the prizes taken, when they are found within its jurisdiction having been taken on the voyage in connection with which the breach of neutrality took place. There is, however, some doubt as to the limit of the neutral's right to try such cases.

C. **A Doubtful Point.**

At the present time there is great uncertainty with regard to the obligations of neutral States in the case of ships built and fitted out within their territory for the service of either belligerent. Till the middle of the nineteenth century the English

idea seems to have been that the neutral government was under no obligation to stop such proceedings, unless the vessel was ready to commence hostilities the moment it left neutral waters. But the events connected with the escape of the *Alabama* and her sister cruisers during the great American Civil War demonstrated the inadequacy of this view. No satisfactory rule has as yet been adopted. Two views demand attention—

(1) The American principle that the intent ought to prevail—the *animus vendendi* being innocent, the *animus belligerendi* being guilty.

This rule has led to endless subtleties in its practical working. There is great difficulty in distinguishing between what is permitted and what is forbidden by it.

(2) The suggestion of Hall that the character of the vessel should be the test—"vessels built primarily for warlike use" being detained, while "vessels primarily fitted for commerce" are allowed to depart unmolested.

This rule has the advantage of clearness; but it would undoubtedly permit the departure of many vessels which might be converted into formidable engines of war.

The Three Rules of the Treaty of Washington, 1871, have, owing to their loose phraseology, raised more difficulties than they have solved; and the award of the Geneva Arbitrators merely settled the dispute submitted to the tribunal. The immense

and unprecendented extension given by it to neutral duties is not likely to be embodied in International Law.

D. Foreign Enlistment Acts.

These are municipal statutes made by States for the protection of their neutrality. If any provisions in them go beyond the requirements of International Law, belligerents cannot demand that such provisions shall be enforced in their favour. On the other hand, if neutral governments are not armed by their own laws with sufficient power to enable them to fulfil their neutral obligations, the plea of such defect of power is no valid answer to belligerent demands. International Law, not Municipal Law, is the measure of a neutral's rights and obligations. This statement is proved abundantly by the history of the British and American Foreign Enlistment Acts.

QUESTIONS

1. Write down the chief obligations of neutral States, distinguishing between those which are undoubted and those concerning which there is some controversy.

2. In what cases has a neutral jurisdiction to try the validity of belligerent captures?

3. Under what circumstances is a neutral bound to prevent the original departure from its ports of vessels fitted out therein for the naval service of a

belligerent? If such vessels escape, how must the neutral State treat them afterwards?

4. Give and criticise the three rules of the Treaty of Washington.

HINTS AS TO READING

This is the most doubtful and difficult part of the Law of Neutrality, and the student must expect to find conflicting views with regard to it in the books he reads. In Hall, Chapters III. and XI. of Part IV. should be read, the former very carefully. In Wheaton portions of Chapter III. of Part IV. bear on our present subject; and Dana's notes are valuable, especially that on *Neutrality or Foreign Enlistment Acts.* Part IV., Chapters II. and III., of Lawrence's *Principles of International Law* should be carefully studied. Walker deals with the questions under discussion in Chapters I. and II. of his Part IV. Chapter XXIV. of Halleck will be found useful, as will Chapter VII. and the first part of Chapter VIII. of Abdy's Kent; Part II., Chapter II., Section I., of Woolsey; Book V., Chapters I. and II., of Manning; Vol. II., Chapters XI. and XII., of Twiss; and the papers numbered III., VI., and VII. in the Letters of Historicus. Bernard's *Neutrality of Great Britain during the American Civil War* and Caleb Cushing's *Treaty of Washington* discuss from an English and American point of view respectively the questions connected with our present subject that arose in the course of the great civil war in the United States.

CHAPTER III

RIGHTS AND OBLIGATIONS AS BETWEEN BELLIGERENT STATES AND NEUTRAL INDIVIDUALS

Ordinary Commerce

A. Various Principles for regulating Maritime Capture.

On land neutral goods in belligerent territory are subject to the ordinary rules of warfare. At sea the interests of belligerents and neutrals are so interwoven in matters of commerce that it is difficult to separate them, and strike at an enemy without injuring a friend. Two principles have found favour as rough attempts to make a workable compromise. They are

(1) That the liability of the goods to capture should be determined by the character of the owner.
(2) That the liability of the goods to capture should be determined by the character of the vehicle which carries them.

The first leads to the practical rule that *Enemies'*

goods can be captured even on board neutral ships, and neutral goods are free from confiscation even on board enemies' ships. This rule was laid down in the *Consolato del Mare*, and became part of the common law of nations. Till 1856 England held by it in all cases, unless bound by treaty to other rules. The second principle gave birth to the twin rules, *Free ships, free goods; Enemies' ships, enemies' goods.* The Dutch were the great champions of these rules during the period when Holland was the chief carrying power: but in order to get the benefit of them they had to embody them in their treaties.

The combination of the two principles has given two more rules standing at opposite poles of severity to neutrals, according as the severe portions or the lenient portions of the results of these principles are joined together. The first was the French rule, *Neutral goods in enemies' ships, and enemies' goods in neutral ships, are liable to capture.* From 1681 to 1744 this was joined with the still more severe rule, *Neutral ships laden with enemies' goods are liable to capture.* The second is the rule of the Declaration of Paris, 1856, *Enemies' goods in neutral ships, and neutral goods in enemies' ships, are not liable to capture.* This last is the old rule, *Free ships, free goods,* without the corollary, *Enemies' ships, enemies' goods.* Attempts were made to foist it into International Law by Prussia in the Silesian Loan controversy, and by the Armed Neutralities of 1780 and 1800. But the opposition of Great Britain was successful, and she did not agree to it

till after the Crimean war. Since then the rule has been accepted by nearly all civilised powers, and seems likely to be incorporated into ordinary International Law through the Declaration of Paris, by the second article of which *The neutral flag covers enemies' goods, with the exception of contraband of war;* while by the third it is provided that *Neutral goods, with the exception of contraband of war, are not liable to capture under the enemies' flag.*

B. Rules of Capture now in force against Neutrals.

The rules of capture which affect the ordinary trade of neutrals at the present time—that is to say, their trade unconnected with blockade, contraband, or unneutral service—may be considered as dealing with

(1) Ships and goods without special protection from the neutral sovereign.

With regard to these we may lay down that

(*a*) Though the old common law of nations allowed the capture of enemies' goods in neutral vessels, the Declaration of Paris has banished the practice from civilised warfare.

(*b*) Though a neutral merchant has the right to lade his goods on board an unarmed merchant vessel belonging to a belligerent, it is doubtful whether he may lade them on board an armed merchant

vessel of a belligerent without rendering them liable to capture, and certain that he may not lade them on board a belligerent ship of war.

(*c*) Resistance to belligerent search on the part of a neutral vessel renders both vessel and cargo subject to confiscation.

(2) Ships and goods specially protected by means of Convoy.

From the middle of the seventeenth century onwards neutral States have often put forward a claim that their merchant ships should be exempt from belligerent search, if under the convoy or escort of their ships of war. The Second Armed Neutrality asserted that the exemption was a rule of International Law. Continental States and continental writers generally adopt this view. But England has always opposed it, and the great jurists of the United States have supported her. It seems clear that

(*a*) The right of search cannot be defeated by the acceptance of convoy.

(*b*) Resistance on the part of the convoying ship renders all the convoyed ships liable to capture and condemnation.

British authorities hold that special agreement is necessary in order to gain exemption from search for neutral ships convoyed by the cruisers of their own country. Neutral

vessels under belligerent convoy are undoubtedly good prize.

QUESTIONS

1. Write a short historical account of the rule, *Free ships, free goods.*

2. What were the rules laid down as to ordinary maritime capture by the Declaration of Paris? Can they be regarded as International Law?

3. Discuss the question whether a neutral may lade his goods on board an armed merchant vessel belonging to a belligerent.

4. Does the presence of neutral convoy exempt convoyed vessels from belligerent search?

HINTS AS TO READING

Chapters IV., VII., IX., and X. of Hall's Part IV. should be read. Portions of Chapter III. of Wheaton's Part IV. deal with our present subject, as also does Lawrence in Part IV., Chapter IV., of his *Principles of International Law.* Manning treats it very ably from an historical point of view in Book V., Chapters VI. and XI. Lecture VI. of Maine should be carefully studied. Chapter XXVIII. of Halleck may be referred to, and also the early portions of Part II., Chapter II., Section II., of Woolsey, Chapter V. of Vol. II. of Twiss, and Chapter X. of Part IX. of Phillimore.

CHAPTER IV

RIGHTS AND OBLIGATIONS AS BETWEEN BELLIGERENT STATES AND NEUTRAL INDIVIDUALS

Blockade

A. The Nature of Blockade.

MARITIME law gives to belligerents the right to prevent access to or egress from the ports of their enemy by stationing a squadron of ships in such a position that they can intercept vessels attempting to approach or leave such ports. This is called establishing a blockade, and, as it cuts off neutral trade, the Law of Blockade is an important part of the Law of Neutrality. Belligerents have sometimes endeavoured to gain all the advantages of a blockade by merely issuing a proclamation to the effect that the enemy's coast, or a part of it, or certain ports along it, are blockaded, or by supporting such a proclamation with an insufficient force. But such attempts are illegal. All doubt on the subject, if any existed, has been set at rest by the fourth article of the Declaration of Paris, which forbids what are called Paper Blockades in the words,

Blockades, in order to be binding, must be effective —that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

Some of the statesmen responsible for the Declaration have explained this to mean that the force must be sufficient to make entrance or egress exceedingly difficult and dangerous.

B. **The Kinds of Blockade.**

Blockades may be classified in two ways. They can be distinguished by differences in the ultimate objects for which they are undertaken, or by differences in the nature of the means taken for making them known. We will consider each separately.

(1) Classification by Difference of Object.
This gives us

(*a*) Military or Strategic Blockades, carried on with a view to the ultimate reduction of the place blockaded.

(*b*) Commercial Blockades, where the object is simply to weaken the resources of the enemy by cutting off his external trade. Such blockades have been denounced as unwarrantable interferences with neutral commerce; but there can be no doubt of their legality, though there may be much of their utility, except in the rare cases where States subjected to them have little or no land frontier across which commerce can be carried on with ease and safety.

(2) Classification by Difference of Notification. This gives us

(*a*) Blockades *de facto* only—that is to say, Blockades the existence of which has not been diplomatically notified to neutral governments. Unless they have continued long enough to be notorious, neutral shipmasters approaching the blockaded ports are entitled to a warning on the spot.

(*b*) Blockades *de facto* accompanied with Notification—that is to say, Blockades the existence of which has been diplomatically notified by the belligerent State to neutral governments. In such cases notification to neutral governments is held by British authorities to be equivalent to notification to neutral shipmasters, and the latter are not entitled to warning unless they can prove actual and unavoidable ignorance of the blockade.

In English prize-law great differences are made in dealing with cases of breach of blockade according to the presence or absence of diplomatic notification. If it has taken place, the act of sailing for a blockaded port constitutes the offence, and the vessel may be captured from the moment it leaves neutral waters; whereas, if there has been no notifi-

cation, the offence is not committed till actual entry has been attempted after due warning. Moreover a notified blockade is not held to be terminated by the temporary absence of the blockading vessels to chase an enemy or escape a storm, though it comes to an end if the blockaders are destroyed or driven away; but an unnotified blockade ceases in law as soon as it ceases in fact. It must, however, be borne in mind that notoriety has the same effect as notification. A group of states follow the British practice; but France is at the head of another group which regards notification as a mere act of diplomatic courtesy devoid of legal consequences, and gives warning in every case to the neutral shipmaster on the first approach of his vessel. Both groups agree in allowing neutral men-of-war, neutral mail-boats, and neutral merchantmen in distress to run in and out of blockaded ports, provided that they carry to and fro neither goods nor forbidden information.

C. The Offence of Breaking Blockade.

To constitute a breach of blockade three things are necessary:

(1) The existence of an effective blockade.
(2) Knowledge of its existence on the part of the shipmaster supposed to have offended.

According to British practice this know-

ledge may be direct or constructive; according to French practice it must be direct.

(3) Some act of violation.

This takes place when ingress is attempted, or, by British rule, even when a vessel starts for a port the blockade of which has been notified or become notorious. It also takes place when egress is attempted with a cargo laden after the commencement of blockade, or after the expiration of the days of grace allowed by the blockaders.

The doctrine of Continuous Voyages applies to cases of breach or attempted breach of blockade. It asserts that, when a voyage has a forbidden destination, the colourable interposition of one or more innocent destinations between the port of departure and the port of arrival does not free the vessel from liability to capture until she heads for the forbidden port. Her course is regarded as one long voyage, tainted from the beginning by the illegality of the final destination. The offence attaches from the moment the vessel leaves neutral waters with the intention of running the blockade, and is not "deposited" till she returns to neutral waters again. But if, at any time during the voyage, the blockade ceases to exist, from that moment the vessel ceases to be liable to capture as a blockade-runner.

D. The Penalty for Breach of Blockade.

Generally speaking the penalty for breach of

blockade is confiscation of both ship and cargo; but the ship alone is condemned, if the vessel and cargo belong to different persons, and the owner of the cargo did not know that the port of destination was blockaded.

Questions

1. Give the text and the true meaning of that article of the Declaration of Paris which deals with blockades.

2. Discuss (*a*) the legality, (*b*) the justice and utility, of Commercial Blockades.

3. Point out the differences between British and French practice with regard to the consequences which flow from the diplomatic notification of an effective blockade.

4. Enumerate the acts which amount to a violation of blockade. What is the penalty for the offence.

Hints as to Reading

The Law of Blockade is given in Hall, Part IV., Chapter VIII.; in Wheaton, Part IV., Chapter III.; in Lawrence, Part IV., Chapter V.; and in Walker, Part IV., Chapter III. Manning deals with it historically in Book V., Chapters IX. and X. Halleck considers it in Chapter XXV.; Twiss in Volume II., Chapter VI.; Phillimore in Part X., Chapter II.; and Woolsey in Part II., Chapter II., Section II. In the Letters of Historicus there are two letters on the subject.

CHAPTER V

RIGHTS AND OBLIGATIONS AS BETWEEN BELLIGERENT STATES AND NEUTRAL INDIVIDUALS

Contraband Trade

A. The Nature of the Offence of Carrying Contraband.

MARITIME law has always given to belligerents the right of intercepting on the way to the enemy such goods as are directly and essentially necessary to him in the conduct of his hostilities. The exercise of this right involves the capture of neutral goods when they are what is called Contraband of War. Neutral merchants are under no obligation to refrain from trading in contraband; but if they convey it to a belligerent they must risk capture by the other belligerent. Their own Government will not protect them; neither, on the other hand, is it bound to prevent their trade. It is to be noted that

(1) The offence consists not in selling the goods, but in carrying them.

(2) To create the offence a belligerent destination is essential; but it need not be immediate. If a merely colourable neutral destination is interposed, the real and final terminus being belligerent, the goods are condemned under the doctrine of Continuous Voyages.

(3) The offence is complete the moment a vessel carrying contraband leaves port for a belligerent destination, and is "deposited" the moment the destination is reached and the goods delivered.

B. **The Tests of Contraband Character.**

In deciding what is contraband we shall be helped by the old division made by Grotius of all goods into three classes, the first being those useful primarily and ordinarily for warlike purposes, the second those useful primarily and ordinarily for peaceful purposes, and the third those useful indifferently for warlike and peaceful purposes, technically called articles *ancipitis usus*. It is universally admitted that the first kind are always contraband, and the second never. There is great difference of opinion as to the contraband character of the third class, and also as to whether certain articles, such as materials for naval construction, shall be included in the first class, and certain other articles, such as coal, in the third. The practice of States in these matters has been based more on self-interest than on principle. We can discern two currents of opinion, which may be roughly dis-

tinguished as the British and the Continental. We will consider them separately.

(1) The British view may be summed up briefly in the propositions that

(*a*) Some goods are to be condemned on mere inspection, as being in their very nature contraband, if found on their way to an enemy's destination. Among these are to be included not only arms and munitions of war, but also such articles as naval stores and horses.

(*b*) With regard to most articles *ancipitis usus*, mere inspection is not sufficient, but there must be further inquiry, and they are to be condemned or not according to the circumstances revealed in the inquiry. This is called the doctrine of Occasional Contraband; and in applying it the Courts consider chiefly the destination of the goods, and also such circumstances as the place of their origin, the special needs of the enemy, and whether the goods are raw material or manufactured articles.

(2) The Continental view may be summed up briefly in the propositions that

(*a*) Only arms, munitions of war, ships of war, parts of weapons, and the materials

for the manufacture of gunpowder and other explosives used in war, are in their own nature contraband.

(*b*) The doctrine of Occasional Contraband must be restricted within the narrowest limits, if not altogether rejected.

The British view has a stronger basis in reason and authority than the other; but our list of the articles that are in their own nature contraband contains several that seem to belong more properly to the class of articles *ancipitis usus*. There is no prospect of avoiding constant controversies, unless all civilised states can be brought to agree periodically upon a list of contraband articles which shall be binding till the next revision.

C. **The Penalty for carrying Contraband.**

Generally speaking the penalty for carrying contraband is confiscation of the contraband goods; but the vessel also is condemned if

(1) It and the contraband cargo belong to the same owner.

(2) False papers are provided, or any other fraudulent device is resorted to.

(3) It has on board articles which a treaty between the owner's own country and the country of the capturing belligerent regards as contraband.

Innocent goods found on board a vessel laden with contraband are condemned if they belong to the same owner as the contraband. Pre-emption, or the forcible purchase of the goods at a fair price, is a mitigation of the strict right of capture sometimes granted by belligerents to avoid a quarrel with neutrals about doubtful articles, or to give indulgence to certain classes of merchandise. Belligerents have occasionally subjected to pre-emption goods that were not contraband; but such a course is contrary to International Law.

QUESTIONS

1. Explain the circumstances under which a neutral is guilty of the offence of carrying contraband. How does the doctrine of Continuous Voyages apply to such cases?

2. What kind of goods are always contraband? Enumerate the chief tests that have been applied in order to determine whether articles *ancipitis usus* are contraband or not.

3. What is the penalty for carrying contraband?

4. Explain the action of the rule of pre-emption.

HINTS AS TO READING

The reader of Hall will find the Law of Contraband set forth in Part IV., Chapter V. It will also be found in Wheaton, Part IV., Chapter III., and in Lawrence, Part IV., Chapter VI. Halleck gives it in Chapter XXVI., Manning in Chapters VII. and VIII.

of Book V.; Twiss in Volume II., Chapter VII.; Phillimore in Part X., Chapter I.; and Walker in Part IV., Chapter III. Much clear and valuable reasoning on the subject will be found in the Letters of Historicus on the *Trent* affair.

CHAPTER VI

RIGHTS AND OBLIGATIONS AS BETWEEN BELLIGERENT STATES AND NEUTRAL INDIVIDUALS

Unneutral Service

A. The Nature of Unneutral Service.

A NEUTRAL individual is forbidden, under penalty of the confiscation of his ship, to perform certain services for a belligerent. The chief acts thus forbidden are

(1) Transmitting military or naval signals or messages.

(2) Carrying certain classes of persons in the service of a belligerent, especially military or naval persons. But diplomatic representatives sent by the enemy to neutral powers may be carried to and fro without offence.

(3) Carrying certain kinds of despatches for a belligerent, especially military or naval despatches. But diplomatic despatches passing between the enemy and neutral countries may be carried to and fro without offence.

Any other services of a kind to give

direct assistance in warlike measures are prohibited as absolutely as those mentioned above.

B. The Tests of Unneutral Service.

Acts of unneutral service stand on a different footing from the carriage of contraband, with which they are sometimes confounded. They are not matters of ordinary trade; but they amount to a definite entering into the service of a belligerent, though only in a limited manner and for a temporary purpose. In many cases it is difficult to draw the line between innocent and guilty acts. Two tests are applied—

(1) The Character of the Contract. If the vessel is actually in the service of a belligerent, and under his control, it is condemned.

(2) The Knowledge of the Master. If he knowingly, or even unknowingly but without due inquiry, performs certain acts which render to a belligerent a distinct service in matters relating to the war, his vessel becomes thereby liable to condemnation and capture, even though he has not placed it for a time under the belligerent's control by a contract of letting and hiring.

C. The Penalty for Unneutral Service.

The distinction between unneutral service and carrying contraband is nowhere more clearly marked

than in the nature of the penalty. In the case of contraband the ship is rarely confiscated, but the goods always. In the case of unneutral service the ship is invariably confiscated, and also any part of the cargo which belongs to her owner. Her destination, too, is immaterial; whereas the offence of carrying contraband cannot exist without a belligerent destination. In recent wars neutral mail-steamers and mail-bags have been exempted from belligerent search on condition of certain guarantees that no noxious communications were being conveyed in them. But this immunity rests rather on comity than on strict right, though there is no reason to suppose that it will be withdrawn in future conflicts.

QUESTIONS

1. Distinguish between the offence of unneutral service and the offence of carrying contraband.
2. Discuss the question whether a belligerent has a right to capture his enemy's ambassadors on board a neutral ship.
3. Under what circumstances may a neutral vessel be condemned for carrying the despatches of a belligerent?
4. What is the position of mail-steamers and mail-bags as regards belligerent search?

HINTS AS TO READING

Hall deals with this subject under the title of *Analogues of Contraband* in Chapter VI. of Part IV. It is considered towards the end of Chapter III. of

Part IV. of Wheaton, and in Part IV., Chapter VII., of Lawrence. Walker deals with it in Part IV., Chapter III. Dana's note on *Carrying Hostile Persons or Papers* is very valuable. Chapter IX. of Abdy's Kent will be found useful, and also the latter part of Chapter XXVIII. of Halleck, and Part IX., Chapter XI., of Phillimore. The letters on the *Trent* case in the Letters of Historicus refer occasionally to portions of our present subject.

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